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code of federal regulations

Administrative Personnel

5

PARTS 1 TO 699

Revised as of January 1, 1991

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Administrative Personnel

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PARTS 1 TO 699

Revised as of January 1, 1991

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AS OF January 1, 1991
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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, 5 CFR 1.1 *refers to title 5, part 1, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

January 1, 1991.

THIS TITLE

Title 5—ADMINISTRATIVE PERSONNEL is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 1-699, 700-1199 and Part 1200-End. The first and second volumes containing Parts 1-1199 are comprised of Chapter I—Office of Personnel Management. The third volume containing Part 1200-End is comprised of Chapter II—Merit Systems Protection Board, Chapter III—Office of Management and Budget, Chapter IV—Advisory Committee on Federal Pay, Chapter V—The International Organizations Employees Loyalty Board, Chapter VI—Federal Retirement Thrift Investment Board, Chapter VII—Advisory Commission on Intergovernmental Relations. Chapter VIII—Office of Special Counsel, Chapter IX—Appalachian Regional Commission, Chapter XI—United States Soldiers' and Airmen's Home, Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel and Chapter XV—Office of Administration, Executive Office of the President and Chapter XVI—Office of Government Ethics. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1991.

A redesignation tables appear in the Finding Aids section of the volumes containing parts 700-1199 and part 1200-End.

For this volume Jim Wickliffe was Chief Editor, assisted by Linda L. Jones. The Code of Federal Regulations is published under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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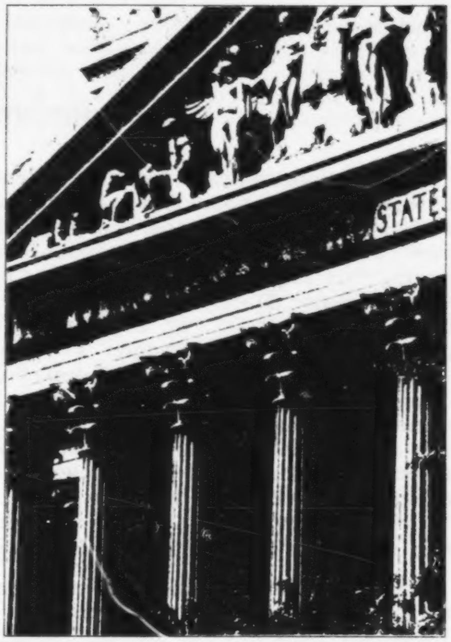

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Title 5—Administrative Personnel

(This book contains Parts 1 to 699)

Note: Title 5 of the United States Code was revised and enacted into positive law by Pub. L. 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this volume may be found in a redesignation table under Title 5, Government Organization and Employees, United States Code.

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CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

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EDITORIAL NOTE: Chapter I—Office of Personnel Management is continued in the volume containing 5 CFR Parts 700 to 1199.

SUBCHAPTER A—CIVIL SERVICE RULES

PART 1—COVERAGE AND DEFINITIONS (RULE I)

Sec.
1.1 Positions and employees affected by the rules in this subchapter.
1.2 Extent of the competitive service.
1.3 Definitions.
1.4 Extent of the excepted service.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10022, Sept. 14, 1963, unless otherwise noted.

§ 1.1 Positions and employees affected by the rules in this subchapter.

The rules in this subchapter shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the rule concerned, the rules in this subchapter shall not apply to positions and employees in the excepted service.

§ 1.2 Extent of the competitive service.

The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in this subchapter as OPM) under § 6.1 of this subchapter; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil service laws by statute. OPM is authorized and directed to determine finally whether a position is in the competitive service.

§ 1.3 Definitions.

As used in the rules in this subchapter:

(a) "Competitive service" shall have the same meaning as the words "classified service", or "classified (competitive) service", or "classified civil service" as defined in existing statutes and executive orders.

(b) "Competitive position" shall mean a position in the competitive service.

(c) "Competitive status" shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: *Provided*, that an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) "Tenure" shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

§ 1.4 Extent of the excepted service.

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by OPM under § 6.1 of this subchapter.

(b) "Excepted service" shall have the same meaning as the words "unclassified service", or "unclassified civil service", or "positions outside the competitive civil service" as used in existing statutes and executive orders.

(c) "Excepted position" shall have the same meaning as "unclassified position", or "position excepted by law", or "position excepted by executive order", or "position excepted by Civil Service Rule", or "position outside the competitive service" as used in existing statutes and Executive orders.

PART 2—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM (RULE II)

Sec.

2.1 Competitive examinations and eligible registers.
2.2 Appointments.
2.3 Apportionment.
2.4 Probationary period.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10023, Sept. 14, 1963, unless otherwise noted.

§ 2.1 Competitive examinations and eligible registers.

(a) OPM shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. OPM is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when OPM determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as OPM may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by OPM. Persons appointed under this paragraph may acquire competitive status subject to satisfactory completion of a probationary period prescribed by OPM.

§ 2.2 Appointments.

(a) OPM shall establish and administer a career-conditional appointment system for positions subject to competitive examinations which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of OPM. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: *Provided*, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under paragraph (b) of this section would be exceeded thereby. Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments: *Provided*, That career appointments shall be given to the following classes of eligibles:

(1) Persons whose appointments are required by statute to be made on a permanent basis;

(2) Employees serving under career appointments at the time of selection from such registers;

(3) Former employees who have eligibility for career appointments upon reinstatement; and

(4) To the extent permitted by law, persons appointed to positions in the field service of the U.S. Postal Service for which salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

(b) Under the career-conditional appointment system there shall be a limit on the number of permanent employees in the Federal civil service which shall be the ceiling established by section 1310 of the Supplemental Appropriation Act, 1952 (65 Stat. 757), as amended. In the event section 1310, supra, is repealed, OPM is authorized to fix such limitation on the number of permanent employees in the Federal civil service as it finds necessary to meet the needs of the service.

(c) OPM may determine the types, duration, and conditions of indefinite and temporary appointments, and may prescribe the method for replacing persons holding such appointments.

§ 2.3 Apportionment.

Subject to such modifications as OPM finds to be necessary in the interest of good administration, appointments to positions in agencies' headquarters offices which are located within the metropolitan area of Washington, D.C., shall be made so as to maintain the apportionment of appointments among the several States, Territories, and the District of Columbia upon the basis of population.

§ 2.4 Probationary period.

Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.

[45 FR 4337, Jan. 22, 1980]

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

Sec.

3.1 Classes of persons who may noncompetitively acquire status.
3.2 Appointments without competitive examination in rare cases.
3.3 Conversion of appointments.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10023, Sept. 14, 1963, unless otherwise noted.

§ 3.1 Classes of persons who may noncompetitively acquire status.

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as OPM may prescribe the following classes of persons may acquire a competitive status without competitive examination:

(1) A person holding a permanent position when it is placed in the competitive service by statute or executive order or is otherwise made subject to competitive examination.

(2) A disabled veteran who, in a manner satisfactory to OPM, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943 (57 Stat. 43).

(3) An employee who has served at least two years in the immediate office of the President or on the White House Staff and who is transferred to a competitive position at the request of an agency.

(4) An employee who was serving when his name was reached for certification on a civil service register appropriate for the position in which he was serving: *Provided*, That the recommendation for competitive status is made prior to expiration of the register on which his name appears or is made during a period of continuous service since his name was reached: *Provided further*, That the register was being used for appointments conferring competitive status at the time his name was reached.

(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

[28 FR 10023, Sept. 14, 1963, as amended by E.O. 12125, 3 CFR, 1979 Comp., p. 375]

§ 3.2 Appointments without competitive examination in rare cases.

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, OPM may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as OPM may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in OPM's annual reports.

§ 3.3 Conversion of appointments.

Any person who acquires a competitive status under this part shall have his appointment converted to career-conditional appointment unless he meets the service requirement for career appointment prescribed under § 2.2(a) of this subchapter.

PART 4—PROHIBITED PRACTICES (RULE IV)

Sec.
4.1 Prohibition against political activity.
4.2 Prohibition against racial, political or religious discrimination.
4.3 Prohibition against securing withdrawal from competition.

AUTHORITY: 5 U.S.C. 3301, 3302.

§ 4.1 Prohibition against political activity.

No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No person occupying a position in the competitive service shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

[28 FR 10024, Sept. 14, 1963]

§ 4.2 Prohibition against racial, political or religious discrimination.

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

[28 FR 10024, Sept. 14, 1963]

§ 4.3 Prohibition against securing withdrawal from competition.

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

[28 FR 10024, Sept. 14, 1963, as amended at 45 FR 4337, Jan. 22, 1980]

PART 5—REGULATIONS, INVESTIGATION, AND ENFORCEMENT (RULE V)

Sec.
5.1 Civil Service Regulations.
5.2 Investigation and evaluations.
5.3 Enforcement.
5.4 Information and testimony.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 12107.

SOURCE: 45 FR 4337, Jan. 22, 1980, unless otherwise noted.

§ 5.1 Civil Service Regulations.

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show:

(a) The particular practical difficulty or hardship involved, (b) what is permitted in place of what is required by regulations, (c) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (d) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual Letter or Bulletin and in the Director's next annual report.

§ 5.2 Investigation and evaluations.

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) Personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by section 311 of the Civil Service Reform Act of 1978, including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§ 5.3 Enforcement.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§ 5.4 Information and testimony.

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE (RULE VI)

Sec.
6.1 Authority to except positions from the competitive service.
6.2 Schedules of excepted positions.
6.3 Method of filling excepted positions and status of incumbents.
6.4 Removal of incumbents of excepted positions.
6.5 Assignment of excepted employees.
6.6 Revocation of exceptions.
6.7 Movement of persons between the civil service system and other merit systems.
6.8 Specified exceptions.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 6.1 Authority to except positions from the competitive service.

(a) OPM may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in OPM's annual report for the fiscal year in which the exceptions are made.

(b) OPM shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of OPM's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.

[28 FR 10025, Sept. 14, 1963, as amended by E.O. 11315, 3 CFR, 1966-1970 Comp., p. 597; E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 6.2 Schedules of excepted positions.

OPM shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character shall be listed in Schedule C.

§ 6.3 Method of filling excepted positions and status of incumbents.

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: *Provided,* That OPM, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

(b) To the extent permitted by law and the provisions of this part, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary.

§ 6.4 Removal of incumbents of excepted positions.

Except as may be required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A and C or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.

§ 6.5 Assignment of excepted employees.

No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of OPM.

§ 6.6 Revocation of exceptions.

OPM may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of OPM's decision making these changes shall be published in the FEDERAL REGISTER.

[E.O. 11315, 3 CFR, 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 6.7 Movement of persons between the civil service system and other merit systems.

Whenever OPM and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§ 6.8 Specified exceptions.

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS-15 of the General Schedule, and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this section.

(b) Positions in the Community Services Administration and ACTION whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS-15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS-15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

(c) Within the Department of Agriculture, positions in the Agriculture Stabilization and Conservation Service the incumbents of which serve as State Executive Directors and positions in the Farmers Home Administration the incumbents of which serve as State Directors or State Directors-at-Large shall be listed in Schedule C for all grades of the General Schedule.

[E.O. 11839, 40 FR 7351, Feb. 19, 1975, as amended by E.O. 11887, 40 FR 51411, Nov. 5, 1975; E.O. 12021, 42 FR 61237, Dec. 2, 1977; 47 FR 4227, Jan. 29, 1982]

PART 7—GENERAL PROVISIONS (RULE VII)

Sec.

7.1 Discretion in filling vacancies.
7.2 Personnel reports.
7.3 Reemployment rights.
7.4 Citizenship.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 7.1 Discretion in filling vacancies.

In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

§ 7.2 Personnel reports.

Each agency shall report to OPM, in such manner and at such times as OPM may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3 Reemployment rights.

OPM, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4 Citizenship.

(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

(c) OPM may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

[E.O. 11935, 41 FR 37301, Sept. 3, 1976]

PART 8—APPOINTMENTS TO OVERSEAS POSITIONS (RULE VIII)

Sec.
8.1 Additional authority of OPM.
8.2 Appointment of United States citizens.
8.3 Appointment of persons not citizens of the United States.
8.4 Positions excepted from the application of this part.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 28 FR 10025, Sept. 14, 1963, unless otherwise noted.

§ 8.1 Additional authority of OPM.

In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, OPM may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in § 8.2. As used in this part, "overseas positions" means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in § 8.4.

§ 8.2 Appointment of United States citizens.

United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of OPM for overseas positions may be given appointments to be known as "overseas limited appointments." Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. OPM may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil-service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended, unless eligible for retirement benefits by continuity of service or otherwise.

§ 8.3 Appointment of persons not citizens of the United States.

Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

§ 8.4 Positions excepted from the application of this part.

This part shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

PART 9—EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS-16, 17, AND 18 OF THE GENERAL SCHEDULE (RULE IX)

IN GENERAL

Sec.
9.1 Coverage.
9.2 Filling positions covered by this part.

CAREER EXECUTIVE ASSIGNMENTS

9.3 Qualifications required for a Career Executive Assignment.
9.4 Recruitment for Career Executive Assignments.
9.5 Career Executive Assignments; selection and assignment.
9.6 Authorization of Limited Executive Assignments.
9.7 Qualifications required for a Limited Executive Assignment.
9.8 Limited Executive Assignment; selection and assignment.
9.9 Removal from a Limited Executive Assignment.
9.10 Limited Executive Assignment; change to other type of appointment.
9.11 Specified Noncareer Executive Assignments.

NONCAREER EXECUTIVE ASSIGNMENTS

9.20 Exception of positions to be filled by Noncareer Executive Assignments.
9.21 Qualifications required for a Noncareer Executive Assignment.
9.22 Noncareer Executive Assignment; selection and assignment.
9.23 Removal from a Noncareer Executive Assignment.

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: E.O. 11315, 3 CFR 1966-1970 Comp., p. 597, unless otherwise noted.

IN GENERAL

§ 9.1 Coverage.

Except as otherwise provided by law, this part applies to:

(a) Positions in grades 16, 17, and 18 of the General Schedule that are in the Executive Branch, except positions excluded from the coverage of 5 U.S.C. 3324(a) by paragraphs (1), (2), and (4) thereof and any position now or hereafter excepted under Civil Service Rule VI so long as that exception remains in effect; and

(b) Persons who are given executive assignments to these positions.

§ 9.2 Filling positions covered by this part.

An appointing officer shall fill a position covered by this part by Career Executive Assignment, unless OPM authorizes a Limited Executive Assignment under § 9.6 of this part or a Noncareer Executive Assignment under § 9.20 of this part.

CAREER EXECUTIVE ASSIGNMENTS

§ 9.3 Qualifications required for a Career Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Career Executive Assignment.

§ 9.4 Recruitment for Career Executive Assignments.

(a) Before selecting any person for a Career Executive Assignment the appointing officer shall first consider fully employees under his agency's merit promotion program and available employees of other Federal agencies qualified pursuant to paragraph (b) of this section. Only after this consideration may the appointing officer elect to recruit applicants from outside the Federal service pursuant to paragraph (b) of this section.

(b) OPM shall be responsible for the establishment of special facilities, including special boards and panels, to recruit well-qualified persons for Career Executive Assignments in the Federal service from among employees holding Career Executive Assignments, other eligible employees, and persons outside the Federal service. The appointing officer shall use these special facilities, including special boards and panels, to recruit applicants from outside the Federal service.

(c) The procedures in this section do not apply when OPM authorizes the movement of an incumbent Career Executive to a Career Executive Assignment at the same or lower grade.

§ 9.5 Career Executive Assignments; selection and assignment.

(a) An appointing officer shall select a person for a Career Executive Assignment solely on the basis of merit and fitness. He shall not permit or consider any political test, qualification, clearance, or recommendation, and shall not discriminate on the basis of race, religion, national origin, sex, age, or physical disability.

(b) The appointing officer may make a Career Executive Assignment only after OPM has finally approved the qualifications and suitability of the person selected.

§ 9.6 Authorization of Limited Executive Assignments.

(a) OPM may authorize agencies to fill a position covered by this part by a Limited Executive Assignment when:

(1) The position is expected to be of limited duration; or

(2) The agency concerned establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for Career Executive Assignments.

(b) OPM shall specify a time limit within which an agency may use this authority and may revoke this authority at any time.

(c) OPM shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.

[E.O. 11315, 3 CFR 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 9.7 Qualifications required for a Limited Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Limited Executive Assignment.

§ 9.8 Limited Executive Assignment; selection and assignment.

An appointing officer may make a Limited Executive Assignment only after OPM has finally approved the qualifications of the person selected.

§ 9.9 Removal from a Limited Executive Assignment.

An appointing officer may remove a person from a Limited Executive Assignment when, in his judgment, the purpose of the assignment has been served or conditions warrant discontinuance of the assignment.

§ 9.10 Limited Executive Assignment; change to other type of appointment.

If a person completes five years of continuous service in an agency in a Limited Executive Assignment the appointing officer shall:

(a) Convert his assignment to a Career Executive Assignment, or to a Noncareer Executive Assignment;

(b) Give him a career appointment to a continuing position in the competitive service in grade GS-15, or below; or

(c) Separate him from the service.

§ 9.11 Specified Noncareer Executive Assignments.

(a) The regional director, regional administrator, or the Secretary's principal regional representative positions in the Departments of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency and the Small Business Administration shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this Section.

(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this section.

[E.O. 11839, 40 FR 7351, Feb. 19, 1975, as amended by E.O. 11856, 40 FR 20259, May 9, 1975; E.O. 12021, 42 FR 61237, Dec. 2, 1977]

NONCAREER EXECUTIVE ASSIGNMENTS

§ 9.20 Exception of positions to be filled by Noncareer Executive Assignments.

(a) After consulting the agency concerned, OPM may except a position from the procedures required for making Career Executive Assignments and authorize an agency to fill the position by a Noncareer Executive Assignment when it determines that there is a need for filling the position by a person who will:

(1) Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the Administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(b) In determining the positions to be excepted under paragraph (a) of this section OPM shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in grades 16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which Noncareer Executive Assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which Noncareer Executive Assignments would be inappropriate.

(c) OPM shall not except a position which has as its principal responsibility the internal management of an agency, or a position involving longstanding recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature. However, a position concerned with the direction of a scientific program could be appropriately excepted when it meets the criteria set forth in paragraph (a) (1), (2), or (3) of this section.

(d) OPM shall review periodically the exceptions made under this section and after consulting the agency concerned, shall revoke an exception when the position no longer meets the criteria for exception. Civil Service Rule III, providing for the noncompetitive acquisition of competitive status, shall not apply in such a case.

(e) Notice of OPM's decision to grant or revoke authority to make Noncareer Executive Assignments shall be published in the FEDERAL REGISTER.

(f) OPM shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.

[E.O. 11315, 3 CFR 1966-1970 Comp., p. 597, as amended by E.O. 12043, 43 FR 9773, Mar. 10, 1978]

§ 9.21 Qualifications required for a Noncareer Executive Assignment.

After appropriate consultation with the agency concerned OPM shall establish specific qualification standards for assignment to a Noncareer Executive Assignment. In addition, as a qualification for continuance in a Noncareer Executive Assignment, the incumbent must continue to maintain the qualifications and relationships that are required for the particular Noncareer Executive Assignment.

§ 9.22 Noncareer Executive Assignment; selection and assignment.

An appointing officer may make a Noncareer Executive Assignment only after OPM has finally approved the qualifications of the person selected. He shall inform each person selected of the qualifications required under § 9.21 of this part for assignment to and continuance in a Noncareer Executive Assignment.

§ 9.23 Removal from a Noncareer Executive Assignment.

An appointing officer shall remove a person from a Noncareer Executive Assignment when the person's qualifications or relationships required for the assignment change or cease to exist.

SUBCHAPTER B—CIVIL SERVICE REGULATIONS

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

Subpart A—Posting Notices of New Regulations

Sec.

110.101 OPM responsibilities.
110.102 Agency responsibilities.

Subpart B—Information Collection Requirements

110.201 OMB control numbers.

AUTHORITY: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

Subpart A—Posting Notices of New Regulations

§ 110.101 OPM responsibilities.

OPM will issue special Federal Personnel Manual (FPM) bulletins to provide notice of its new regulations. Each special bulletin will transmit:

(a) A reprint of the notice of rulemaking which appears in the FEDERAL REGISTER.

(b) A posting notice which briefly explains the nature of the change, and provides a place for the receiving office to indicate where the full text of the FEDERAL REGISTER notice will be available for review locally.

[44 FR 67626, Nov. 27, 1979]

§ 110.102 Agency responsibilities.

(a) *Making regulations available for review.* Offices receiving the reprints of notices of rulemaking described in § 110.101(a) will make them available for review upon request. Each office will complete the posting notice described in § 110.101(b) to indicate where and how requests to review these materials should be made.

(b) *Posting locations and supplemental announcements.* Once completed, posting notices will be displayed in a prominent place. Agencies should choose the posting location which best fits their physical layout. Agencies may, at their discretion, supplement these postings with announcements of new regulations in employee newsletters and use other communication methods to provide notice of regulatory changes. The basic requirement to post the notice continues, however, even if supplemental announcement methods are used.

(c) *Posting after the Federal Register comment date passes.* The public comment period on proposed regulations begins when a notice of proposed rulemaking is published in the FEDERAL REGISTER, not with the posting of the notice described in § 110.101(b). The purpose of the § 110.101(b) notice is solely to inform managers and employees of changes. Agencies are required to post the § 110.101(b) notice even if the formal deadline for comments shown in the preamble of the FEDERAL REGISTER notice of rulemaking has passed. Agencies should make every reasonable effort to minimize delays in distributing the special Federal Personnel Manual bulletins described in § 110.101 to their field offices.

(d) *No fixed posting period.* There are no minimum or maximum time limits on displaying the notice described in § 110.101(b) of this section. Each office receiving a notice for posting should choose the posting period which provides the best opportunity to inform managers and employees of regulatory changes based upon office layout, geographic dispersion of employees and other local factors.

[44 FR 67626, Nov. 27, 1979]

Subpart B—Information Collection Requirements

§ 110.201 OMB control numbers.

(a) Under section 3507(f) of the Paperwork Reduction Act of 1980 (Pub. L. 96-551), control numbers assigned by the Office of Management and Budget must be displayed with agency information collection requirements.

(b) This paragraph displays OMB-assigned control numbers for information collection requirements contained within chapter 1 of this title.

5 CFR citation	OMB control No.
§ 213.3102(ii)	3206-0082
§ 300.704(b)	3206-0166
§ 530.304	3206-0100
§ 532.105	3206-0036
§ 536.306	3206-0090
Part 734	3206-0092
Part 734	3206-0098
§ 831.101	3206-0033
§ 831.104	3206-0059
§ 831.104	3206-0061
§ 831.501(b)	3206-0121
§ 831.502(e)	3206-0034
§ 831.601	3206-0032
§ 831.601	3206-0042
§ 831.601	3206-0088
§ 831.601	3206-0096
§ 831.601	3206-0099
§ 831.601	3206-0103
§ 831.1904	3206-0120
§ 831.2002	3206-0128
§ 890.202	3206-0101
§ 891.104(f)	3206-0017
§ 891.104(f)	3206-0104
§ 891.201	3206-0102
§ 950.105	3206-0131
§ 950.202	3206-0131
§ 950.203	3206-0131
§ 950.204	3206-0131
§ 950.205	3206-0131
§ 950.302	3206-0131
§ 950.303	3206-0131
§ 950.601	3206-0131
§ 950.901	3206-0131

[49 FR 7553, Mar. 1, 1984, as amended at 52 FR 7400, Mar. 11, 1987; 52 FR 16175, May 1, 1987; 53 FR 19147, May 26, 1988]

PART 151—POLITICAL ACTIVITY OF STATE OR LOCAL OFFICERS OR EMPLOYEES

GENERAL PROVISIONS

Sec.
151.101 Definitions.

PERMISSIBLE ACTIVITIES

151.111 Permissible activities.

PROHIBITED ACTIVITIES

151.121 Use of official authority; coercion; candidacy; prohibitions.
151.122 Candidacy; exceptions.

AUTHORITY: 5 U.S.C. 1302, 1501-1508, as amended.

SOURCE: 35 FR 16783, Oct. 30, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 41 FR 48110, Nov. 2, 1976.

GENERAL PROVISIONS

§ 151.101 Definitions.

In this part:

(a) "State" means a State or territory or possession of the United States.

(b) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

(c) "Federal agency" means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System;

(d) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency but does not include—

(1) An individual who exercises no functions in connection with that activity.

(2) An individual employed by an educational or research institution, establishment, agency, or system, which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(e) "Political party" means a National political party, a State political party, and an affiliated organization.

(f) "Election" includes a primary, special, and general election.

(g) "Nonpartisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector receives votes in the last preceding election at which Presidential electors were selected.

(h) "Partisan" when used as an adjective refers to a political party.

(i) "Elective office" means any office which is voted upon at an election as defined at § 151.101(f), above, but does not include political party office.

[40 FR 42733, Sept. 16, 1975]

PERMISSIBLE ACTIVITIES

§ 151.111 Permissible activities.

(a) All State or local officers or employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this part. A State or local officer or employee may participate in all political activity not specifically restricted by law and this part, including candidacy for office in a nonpartisan election and candidacy for political party office.

[40 FR 42733, Sept. 16, 1975]

PROHIBITED ACTIVITIES

§ 151.121 Use of official authority; coercion; candidacy; prohibitions.

A State or local officer or employee may not—

(a) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; or

(b) Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose.

(c) Be a candidate for elective public office in a partisan election.

[40 FR 42733, Sept. 16, 1975]

§ 151.122 Candidacy; exceptions.

Section 151.121(c) does not apply to—

(a) The Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(b) The Mayor of a city;

(c) A duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system;

(d) An individual holding elective office;

(e) Activity in connection with a nonpartisan election; or

(f) Candidacy for a position of officer of a political party, delegate to a political party convention, member of a National, State, or local committee of a political party, or any similar position.

[40 FR 42733, Sept. 16, 1975, as amended at 40 FR 47101, Oct. 8, 1975]

PART 175—OPM MANDATORY REVIEW OF CLASSIFIED DOCUMENTS

Sec.
175.101 Policy.
175.102 Requests for the declassification of documents.

AUTHORITY: E.O. 12065, 43 FR 28949.

§ 175.101 Policy.

The Office of Personnel Management bases its procedures for handling national security information on Executive Order 12065, "National Security Information," and Information Security Oversight Office Directive No. 1 concerning national security information.

[45 FR 995, Jan. 4, 1980]

§ 175.102 Requests for the declassification of documents.

Any Federal agency, Government employee or member of the public has the right to request a mandatory review of any classified document, held by the Office of Personnel Management, which was classified for national security purposes by the Civil Service Commission. The Office of Personnel Management does not have the authority to classify documents.

(a) Requests for mandatory declassification review should be addressed to the Director, Office of Management, or the designee of the Director, who will act on requests within 60 days. Requests need not be made in any special form but shall, as specified in section 3-501 of the Executive order, reasonably describe the information.

(b) Based upon the review, the document, or any reasonably segregable portion thereof that no longer requires protection under the Executive order, shall be declassified and released unless withholding is otherwise warranted under applicable law.

(c) No OPM official will refuse to confirm the existence or non-existence of any document requested under the Freedom of Informaton Act or the mandatory review provisions of the Executive order, unless the fact of its existence or non-existence would itself be classifiable under the Executive order. OPM Administrative Manual chapter 22, covering OPM policies and procedures relating to classified information or material is available for inspection by the public in the OPM Library, Room 5H27, 1900 E. St., N.W., Washington, D.C., or in one of the 10 OPM regional offices in the following cities: Atlanta, Boston, Chicago, Dallas, Denver, New York, Philadelphia, St. Louis, San Francisco and Seattle.

[45 FR 995, Jan. 4, 1980]

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

177.101 Scope of regulations.
177.102 Administrative claim; when presented; appropriate OPM office.
177.103 Administrative claim; who may file.
177.104 Investigations.
177.105 Administrative claim; evidence and information to be submitted.
177.106 Authority to adjust, determine, compromise, and settle.
177.107 Limitations on authority.
177.108 Referral to Department of Justice.
177.109 Final denial of claim.
177.110 Action on approved claim.

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11.

SOURCE: 33 FR 12405, Sept. 4, 1968, unless otherwise noted.

§ 177.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM (referred to in this part as an "employee") while acting within the scope of his office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For the purpose of this part, a claim is deemed to have been presented when OPM receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury", Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to OPM, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to OPM as of the date that the claim is received by OPM. If a claim is mistakenly addressed to or filed with OPM, OPM shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) Except as provided in paragraph (c)(1) of this section, a claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

(c) (1) When a claim is for $500 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the OPM's regional office which employs the individual whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. In these cases, the address of the appropriate Regional Director is one of the following:

New England Region, John W. McCormack, Post Office and Courthouse Building, Boston MA 02109 (formerly Boston Region).

Eastern Region, New Federal Building, 26 Federal Plaza, New York, NY 10007 (formerly New York Region).

Mid-Atlantic Region, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106 (formerly Philadelphia Region).

Southeast Region, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, GA 30303 (formerly Atlanta Region).

Great Lakes Region, John C. Kluczynski, Federal Building, 29th Floor, 230 South Dearborn Street, Chicago, IL 60604 (formerly Chicago Region).

Southwest Region, 100 Commerce Street, Dallas, TX 75242 (formerly Dallas Region).

Mid-Continent Region, 1256 Federal Building, 1520 Market Street, St. Louis, MO 63103 (formerly St. Louis Region).

Rocky Mountain Region, Building 20, Denver Federal Center, Denver, CO 80225 (formerly Denver Region).

Western Region, 525 Market Street, 23rd Floor, San Francisco, CA 94105 (formerly San Francisco Region).

Northwest Region, Federal Building, 26th Floor, 915 Second Avenue, Seattle, WA 98174 (formerly Seattle Region).

(2) If the OPM employee's office of employment is the Central Office of OPM or is not known and not reasonably ascertainable, the claimant shall mail or deliver his claim to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 65025, Nov. 9, 1979]

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent on him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage*. In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority, to be exercised in his discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part any claim for $500 or less which is based on the alleged negligence or wrongful act or omission of an employee of his Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used for OPM, or both, is more than $500, or all damage to non-Government property being used by individuals not employed by the Government is more than $500.

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

[33 FR 12405, Sept. 4, 1968, as amended at 44 FR 76747, Dec. 28, 1979]

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of $25,000 may be effected only with the advance written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 177.107, the referral or request shall be transmitted to the Department of Justice by the General Counsel of OPM or his designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with OPM action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury", Standard Form 95, (2) a claims settlement agreement, and (3) a "Voucher for Payment", Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 179—CLAIMS COLLECTION STANDARDS

Sec.
179.101 General collection standards.
179.102 Delegation of authority.

Authority: Sec. 3, 80 Stat. 309; 31 U.S.C. 952; Pub. L. 95-454; Reorganization Plan No. 2 of 1978.

§ 179.101 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101 et seq.), apply to the administrative claim collection activities of OPM.

[33 FR 12406, Sept. 4, 1968]

§ 179.102 Delegation of authority.

The Associate Director for Compensation shall act on claims that arise under subchapter III of chapter 83, chapter 87 and Chapter 89 of title 5, United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465). The General Counsel shall act on all other claims.

[33 FR 12406, Sept. 4, 1968, as amended at 44 FR 76747, Dec. 28, 1979]

PART 180—EMPLOYEES' PERSONAL PROPERTY CLAIMS

Sec.
180.101 Scope and purpose.
180.102 Claimants.
180.103 Time limitations.
180.104 Allowable claims.
180.105 Claims not allowed.
180.106 Claims involving carriers and insurers.
180.107 Claims procedure.
180.108 Settlement of claims.

AUTHORITY: Sec. 3, 78 Stat. 767, as amended; 31 U.S.C. 241.

SOURCE: 43 FR 47163, Oct. 13, 1978, unless otherwise noted.

§ 180.101 Scope and purpose.

(a) The Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240 to 243, authorizes the Director, Office of Personnel Management to settle and pay (including replacement in kind) claims of officers and employees of OPM, amounting to not more than $15,000, for damage to or loss of personal property incident to their service. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquistion and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured.

§ 180.102 Claimants.

(a) The following are proper claimants:

(1) Officers and employees of OPM;

(2) Former officers and employees of OPM whose claims arose out of incidents which occurred before their separation;

(3) The authorized agent or legal representative of persons in §§ 180.102(a)(1) and 180.102(a)(2);

(4) Survivors of persons in §§ 180.102(a)(1) and 180.102(a)(2) in the following order of precedence:

(i) Spouse,

(ii) Children,

(iii) Father or mother, or both,

(iv) Brothers or sisters, or both.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 180.103 Time limitations.

A claim must be presented in writing within 2 years after it accrues, except during war or armed conflict. If war or armed conflict occurs within the 2-year period following accrual, when claimant shows good cause, the claim may be presented within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict. A claim accrues when loss or damage is or should have been discovered by claimant even though such loss or damage occurred at a prior time.

§ 180.104 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, a member of claimant's family, or claimant's private employee (the standard to be applied is

that of reasonable care under the circumstances);

(2) The possession of the property damaged or lost and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss or solely because the claimant was not legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in § 180.104(a) and the other provisions of this part, any claim for damage to or loss of personal property incident to service with OPM may be considered and allowed. The following are examples of the principal types of claims which may be allowed. These examples are not exclusive and other types of claims may be allowed unless excluded by § 180.106:

(1) *Property damaged or lost in quarters.* Claims may be allowed for damage to or loss of property located at:

(i) Quarters within the 50 States and the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a local inhabitant; or

(iii) Any warehouse, office, working area, or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to or loss of property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost in oversea shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other motor vehicles may be allowed only when use of the vehicle on a non-reimbursable basis was required by the claimant's supervisor.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their contents under the provisions of § 180.104(c)(2). Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked;

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant as required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than OPM.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

§ 180.105 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 States and the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of § 180.105(a), the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 180.102(a) are not payable.

(6) *Small items of substantial value.* Claims are not payable for money or for small articles of substantial value, such as watches or expensive jewelry, when shipped with household goods or as unaccompanied baggage.

(7) *Articles of extraordinary value.* Claims are not payable for expensive articles of gold, silver, other precious metals, paintings, antiques other than bulky furnishings, relics, and other articles of extraordinary value when shipped with household goods by ordinary means or as unaccompanied baggage at normal released valuation. Claims for such articles are payable when their loss is incident to shipment by expedited mode in accordance with current joint travel regulations. This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken by the claimant.

(8) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimant's immediate household. This prohibition includes

articles acquired at the request of others and articles for sale.

(9) *Property used for business.* Claims are not payable for property normally used for business or profit.

(10) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(11) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitations imposed on the weight of shipments of household goods.

(12) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money order, and traveler's checks.

(13) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than OPM.

(14) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 180.104(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorius claims for damage to or loss of motor vehicles may be recommended to the Office of the General Counsel for consideration and approval for payment.

(15) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(16) *Losses recoverable from carrier.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, except as permitted under § 180.106.

(17) *Losses recoverable from insurer.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from an insurer, except as permitted under § 180.106.

(18) *Losses recoverable from contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable under contract, except as permitted under § 180.106.

(19) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjuction with submitting a claim under this part. However, where, in the opinion of the approving authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value or the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(20) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, cost to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper it will be paid. This does not preclude appropriate disciplinary action if warranted.

§ 180.106 Claims involving carriers and insurers.

(a) Claimants must comply with the following before presenting claims involving a carrier or insurer:

(1) Whenever property is damaged or lost while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government. The claimant may present a claim to the Government immediately after making demand on the carrier.

(2) Whenever property which is damaged or lost incident to the claimant's service is insured in whole or in part, the claimant must make a written demand against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of a claim

against the Government. The claimant may present a claim to the Government immediately after making demand on the insurer.

(b) If the claimant fails to make the required demand on the carrier or insurer or make reasonable efforts to collect the amount recoverable, the amount payable under the provisions of these regulations shall be reduced by the maximum amount recoverable. However, no deduction will be made if the circumstances of the claimant's service were such as to preclude timely filing of the claim with the carrier or insurer and it is determined that a demand would have been impracticable or unavailing in any event.

(c) When a claim is paid by OPM, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(d) After payment of a claim by the United States, if the claimant receives any payment from a carrier, contractor, insurer, or other third party, the claimant will pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

§ 180.107 Claims procedure.

(a) *Filing a claim.* Claims not exceeding $500 shall be filed with the appropriate bureau or regional director. Claims in excess of $500 shall be filed with the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415. Claims shall be in writing, using G.C. Form 33 when available, and shall contain as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each piece of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the approving authority determines that a genuine hardship exists.

(c) *Claims investigator.* When a claim is filed, the appropriate associate or regional director, or the General Counsel, shall appoint a claims investigator to evaluate the claim and make a recommendation as to its disposition. Where the cost to repair damaged property does not exceed $100 per item and the claims investigator has inspected the damaged property, the claimant and the approving authority may agree upon a reasonable amount to be claimed for repair of an individual item in lieu of an independent estimate by a qualified repairman. In such a case, the claims investigator and the approving authority will certify that the property has been examined and that the amount claimed is a reasonable allowance for the cost of the repairs.

(d) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Name of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(e) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(f) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statements of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and net weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(g) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property, on board.

(h) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved, and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 180.104(c)(8).

(i) *Property used for benefit of Government.* Claims for property loss when the property was used for the benefit of the Government should be accompanied by:

(1) A statement from the proper authority that the property was supplied by the claimant in the performance of official business at the request of, or

with the knowledge and consent of, superior authority or by reason of necessity; and

(2) If the property being used for the benefit of the Government was damaged or lost while not in use, evidence that the loss occurred in an authorized storage area.

(j) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition, should be accompanied by:

(1) Name, grade, and address of the person or persons who received the money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds, and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(k) *Motor vehicles in transit.* Claims for damage to motor vehicles in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

§ 180.108 Settlement of claims.

(a) *Authority.* Associate Directors and Regional Directors are authorized to settle and pay any claim not exceeding $500 and arising under this part. The General Counsel is authorized to settle and pay any claim not exceeding $15,000 and arising under this part. Unless cognizable under § 180.104 (c)(3), claims for damage to or loss of motor vehicles may be settled and paid only by the General Counsel.

(b) *Redelegation.* The approving authorities may establish such procedures and make such redelegations as may be required to fulfill the objectives of this part.

(c) *Cost or value.* The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property) or the value at the time of acquisition if not acquired by purchase or exchange. The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

(d) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when damaged beyond economical repair or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(e) *Appreciation.* There will be no allowance for appreciation in the value of the property except that the cost of the item may be adjusted to reflect changes in the purchasing power of the dollar before depreciation is computed. Appreciation will not be allowed solely because the loss occurred or the claimant now resides in an area remote from the place of purchase of the property.

(f) *Expensive articles.* Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(g) *Acquisition.* Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

(h) *Replacement.* Replacement of damaged or lost property may be made in kind whenever appropriate.

(i) *Amount allowable.* Subject to the limitations of §§ 180.108(c) through 180.108(h), the amount allowable in settlement of a claim is either:

(1) The depreciated value immediately prior to damage or loss of property damaged beyond economical repair or lost, less any salvage value; or

(2) The reasonable cost of repairs when property is economically repairable, provided that the cost of repairs does not exceed the depreciated value.

(j) *Notification.* The approving authority shall notify the claimant in writing of the action taken on the claim and, if the claim is disapproved or only partially approved, the reasons therefor.

(k) *Carrier or insurer.* In the event a claim submitted against a carrier or insurer under § 180.106 had not been settled before settlement of a claim against the Government under this part, the approving authority shall notify such carrier or insurer to pay the proceeds of the claim to OPM to the extent OPM has made payment to the claimant.

(l) *Review.* The action of the approving authority is final; however, the decision may be reconsidered if the claimant so requests and submits a written explanation why reconsideration is appropriate.

(m) *Attorney's fees.* No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this or any other provision of sections 240 to 243 of title 31, United States Code, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1000.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

Subpart A—Applicability of Regulations; Definitions

Sec.

210.101 Applicability of various parts of regulations.
210.102 Definitions.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218.

Subpart A—Applicability of Regulations; Definitions

§ 210.101 Applicability of various parts of regulations.

(a) *General.* In most parts, the applicability of the part is stated specifically in the part or is otherwise apparent from the substance of the part.

(b) *Parts 315 through 339.* Parts 315 through 339 of this chapter apply to all positions in the competitive service and to all incumbents of those positions; and, except as specified by or in an individual part, these parts do not apply to positions in the excepted service or to incumbents of those positions.

[33 FR 12407, Sept. 4, 1968, as amended at 44 FR 45587, Aug. 3, 1979]

§ 210.102 Definitions.

(a) The definitions in paragraph (b) of this section apply throughout this chapter, except when a defined term is specifically modified in or specifically defined for the purpose of a particular part.

(b) In this chapter:

(1) "Appointing officer" means a person having power by law, or by lawfully delegated authority, to make appointments to positions in the service of the Federal Government or the government of the District of Columbia.

(2) "OPM" means the Office of Personnel Management.

(3) "Days", unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this chapter, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

(4) "Demotion" means a change of an employee, while serving continuously within the same agency:

(i) To a lower grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a lower rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(5) "Eligible" means an applicant who meets the minimum requirements for entrance to an examination and is

rated 70 or more in the examination by OPM.

(6) "Employee" means a civilian officer or employee.

(7) "Metropolitan area of Washington, D.C.", means the District of Columbia; Alexandria, Fairfax, and Falls Church Cities, Va.; Arlington, Fairfax, Loudoun, and Prince William Counties, Va.; and Charles, Montgomery, and Prince Georges Counties, Md.

(8) "Noncompetitive action" means a promotion, demotion, reassignment, transfer, reinstatement, or an appointment based on prior service.

(9) "Overseas" means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands.

(10) "Position change" means a promotion, demotion, or reassignment.

(11) "Promotion" means a change of an employee, while serving continuously within the same agency:

(i) To a higher grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a higher rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(12) "Reassignment" means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

(13) "Reemployed annuitant" means an employee whose annuity under subchapter III of chapter 83 of title 5, United States Code, was continued on reemployment in an appointive position on or after October 1, 1956.

(14) "Register" means a list of qualified applicants compiled in order of relative standing for certification.

(15) "Reinstatement" means the noncompetitive reemployment for service as a career or career-conditional employee of a person formerly employed in the competitive service who had a competitive status or was serving probation when he was separated from the service.

(16) "Status quo employee" means an employee who failed to acquire a competitive status when the position in which he was serving was placed in the competitive service by a statute, Executive order, or Civil Service rule, which permitted his retention without the acquisition of status.

(17) "Tenure" means the period of time an employee may reasonably expect to serve under his current appointment. It is granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is in a competitive position or in an excepted position.

(18) "Transfer" means a change of an employee, without a break in service of 1 full workday, from a position in one agency to a position in another agency.

[33 FR 12407, Sept. 4, 1968, as amended at 34 FR 19495, Dec. 10, 1969; 38 FR 22535, Aug. 22, 1973]

PART 211—VETERAN PREFERENCE

AUTHORITY: 5 U.S.C. 1302.

Subpart A—Definitions

§ 211.101 Definitions.

In this chapter, "preference eligible" has the meaning given that term by section 2108 of title 5, United States Code.

[33 FR 12408, Sept. 4, 1968]

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Subpart A—Competitive Service

Sec.
212.101 Definitions.
212.102 Authority to make determinations.

Subpart B—[Reserved]

Subpart C—Competitive Status

212.301 Competitive status defined.

Subpart D—Effect of Competitive Status on Position

212.401 Effect of competitive status on position.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) "Competitive service" has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) "Competitive position" means a position in the competitive service.

(5 U.S.C. 2102)

[33 FR 12408, Sept. 4, 1968, as amended at 45 FR 62413, Sept. 19, 1980]

§ 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

Subpart B—[Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment or under a career executive assignment following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the Civil Service rules and regulations.

Subpart D—Effect of Competitive Status on Position

§ 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position.

PART 213—EXCEPTED SERVICE

Subpart A—General Provisions

Sec.

213.101 Definitions.
213.102 Identification of positions in Schedule A, B, or C.
213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

Subpart B—[Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.
213.3102 Entire executive civil service.
213.3199 Temporary organizations.

SCHEDULE B

213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.
213.3202 Entire executive civil service.

SCHEDULE C

213.3301 Positions of a confidential or policy-determining character.
213.3301b Revocation of exceptions.
213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of the creation of a new department or agency.

AUTHORITY: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337 (h) and 8457.

SOURCE: 46 FR 20147, Apr. 3, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 213.101 Definitions.

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.

(b) "Excepted position" means a position in the excepted service.

(5 U.S.C. 2103)

§ 213.102 Identification of positions in Schedule A, B, or C.

The Office of Personnel Management shall decide whether the duties of any particular position are such that it may be filled as an excepted position under Schedule A, B, or C. Authority to establish positions under Schedule C may be delegated under terms of an agreement between OPM and employing agencies. Establishment of Schedule C positions under terms of such an agreement would be subject to existing criteria set forth in § 213.3301, to quotas established by OPM, and to any additional instructions prepared by OPM.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, and C.

(a) Schedule A, B, and C appointing authorities available for use by all agencies shall be published as regulations in the FEDERAL REGISTER and the Code of Federal Regulations. These authorities shall also be published in the Federal Personnel Manual.

(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the FEDERAL REGISTER.

(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be published annually as a notice in the FEDERAL REGISTER.

[47 FR 28902, July 2, 1982]

Subpart B—[Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is impracticable to examine.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is not practicable to examine. Examining for this purpose means application of the qualification standards and requirements established for the competitive service. Positions filled under this authority are excepted from the competitive service and constitute Schedule A. For each authorization under this section, OPM shall assign an identifying number from 213.3102 through 213.3199 to be used by the appointing agency in recording appointments made under that authorization.

(b) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position listed in Schedule A for student employment within the United States.

(c) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency or the son or daughter of a member of its uniformed service to a summer position when:

(1) The opportunities for employment have been publicized in the summer announcement, OPM regional and/or area office supplements, or

through Federal job information centers and State Employment Services for a minimum 2-week period;

(2) There are no eligible available with the same or higher rating under merit staffing plans for which the ranking criteria satisfy job-relatedness requirements of FPM Supplement 271-2, "Tests and Other Applicant Appraisal Procedures," or for which ranking is not appropriate and qualified candidates are considered on a strictly random basis; and

(3) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(d) Paragraphs (b) and (c) of this section do not restrict the appointment of persons:

(1) Who are eligible for placement assistance under OPM's Displaced Employees (DE) Program;

(2) Who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property;

(3) Who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by OPM and published in the Federal Personnel Manual; or

(4) Who are severely physically handicapped or mentally retarded when such appointees meet the criteria under Schedule A appointing authorities § 213.3102 (t) and (u), except that for the (u) eligibility no certification from a State rehabilitation or Veterans Administration counselor is required;

(e) An agency may appoint for summer employment within the United States in positions under Schedule A only in accordance with the terms of OPM's summer employment program. This restriction does not apply to positions that are excepted only when filled by particular types of individuals.

(f) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school as distinguished from a coorespondence student.

[46 FR 20147, Apr. 3, 1981; 46 FR 45323, Sept. 11, 1981]

§ 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his/her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS-3. This limitation on compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8457 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (l) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission: or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS-7, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be: (1) Bona fide high school science or mathematics teachers or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under Part 302 of this chapter are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)-(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual Chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instructions issued by the Office.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by the Office.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by the Office of Personnel Management or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions the duties of which involve routine work up to and including the GS-4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full-time whenever their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. However, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under the authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1-year beyond the date of that person's release from custody.

(y) Positions at grade GS-2 and below for summer employment as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of the Office except when the authority is specifically included in a delegated examining agreement with the Office.

(cc) Positions at GS-15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd)-(ee) [Reserved]

(ff) Not to exceed 24 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

(gg)-(hh) [Reserved]

(ii) Positions of Presidential Intern, GS-9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS-9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with the provisions of § 315.708 of this chapter and requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

(5 U.S.C. 3301, 3307, 8337(h); 5 U.S.C. 3301, 3302; EO 12364, 47 FR 22931)

[47 FR 28902, July 2, 1982, as amended at 47 FR 43634, Oct. 1, 1982; 48 FR 2115, Jan. 18, 1983; 48 FR 11923, 11924, Mar. 22, 1983; 48

FR 24857, June 3, 1983; 50 FR 11145, Mar. 20, 1985; 52 FR 37762, Oct. 9, 1987; 53 FR 15353, Apr. 29, 1988; 54 FR 2985, Jan. 23, 1989]

§ 213.3199 Temporary organizations.

(a) Positions at GS-15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS-15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met:

(1) The temporary organization is established by an authority outside the agency, usually by law or Executive order;

(2) The temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years;

(3) The work to be performed by the temporary organization is outside the agency's continuing responsibilities; and

(4) The positions filled under this authority are those for which other staffing resources or authorities are not available within the agency.

An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

[47 FR 28904, July 2, 1982]

SCHEDULE B

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to positions which are not of a confidential or policy-determining character, and which are not in the Senior Executive Service, for which it is impracticable to hold open competition or to apply usual competitive examining procedures. Appointments under this authority are subject to the basic qualification standards established by the Office of Personnel Management for the occupation and grade level. Positions filled under this authority are excepted from the competitive service and constitute Schedule B. For each authorization under this section, OPM shall assign a number from 213.3202 through 213.3299 to be used by the appointing agency in recording appointments made under that authorization.

(b)[Reserved]

[46 FR 20147, Apr. 3, 1981, as amended at 47 FR 57655, Dec. 28, 1982; 53 FR 15353, Apr. 29, 1988]

§ 213.3202 Entire executive civil service.

The provisions established under paragraphs (a) through (i) of this section are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S Truman Foundation Scholarship Program under the provisions of Pub. L. 93-842 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of E.O. 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

(h)-(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS-15 and below when filled by individuals who: (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disbility; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) [Reserved]

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS-15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

[47 FR 28904, July 2, 1982, as amended at 47 FR 38258, Aug. 31, 1982; 52 FR 25194, July 6, 1987; 52 FR 43722, Nov. 16, 1987; 53 FR 15353, Apr. 29, 1988; 54 FR 15371, Apr. 18, 1989; 54 FR 18875, May 3, 1989; 55 FR 26419, June 28, 1990]

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining character.

Upon specific authorization by OPM, or under the terms of an agreement with OPM, agencies may make appointments under this section to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position authorized under this section will be assigned a number from 213.3302 to 213.3399, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

[48 FR 39209, Aug. 30, 1983]

§ 213.3301b Revocation of exceptions.

(a) The exception from the competitive service for each position at GS-15 and below listed in Schedule C by OPM is revoked immediately upon the position becoming vacant.

(b) An agency shall notify the Office of Personnel Management within 3 work days after a Schedule C position at GS-15 and below has been vacated.

[46 FR 58271, Dec. 1, 1981]

§ 213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

(a) An agency may establish temporary positions at the GS-15 grade level and below necessary to assist a department or agency head during the period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or at the time of the creation of a new department or agency. Such positions shall be either:

(1) Identical to an existing Schedule C position if intent to vacate that position has been put in writing by management or the present incumbent, such position to be designated as identical Temporary Schedule C (ITC); or

(2) A new temporary Schedule C position, to be designated New Temporary Schedule C (NTC), when it is determined that the department or agency head's needs cannot be met through establishment of an Identical Schedule C position. The number of NTC positions established by any one agency may not exceed 25 percent of the total number of permanent Sched-

ule C positions authorized for that agency as of March 31, 1980. In the case of the creation of a new department or agency, the number of NTC positions should be reasonable in light of the size and program responsibilities of that department or agency. For those agencies with delegated authority to except positions under Schedule C, the total number of NTC positions established may not exceed 25 percent of that agency's quota of permanent Schedule C positions as approved by the Office of Personnel Management or 25 percent of the total number of permanent Schedule C positions authorized for that agency as of March 31, 1980, whichever is greater.

(b) Individual appointments under this authority may be made for 120 days, with one additional extension of 120 days. These positions must be of a confidential or policy-determining character, and are subject to instructions issued by the Office of Personnel Management.

[46 FR 20147, Apr. 3, 1981, as amended at 46 FR 31405, June 16, 1981. Redesignated at 46 FR 35079, July 7, 1981]

PART 214—SENIOR EXECUTIVE SERVICE

Subpart A—[Reserved]

Subpart B—General Provisions

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214.201 Definitions.
214.202 Authority to make determinations.

Subpart C—Exclusions

214.301 Exclusions.

Subpart D—Types of Positions

214.401 Types of positions.
214.402 Career reserved positions.
214.403 Change of position type.

Authority: 5 U.S.C. 3132.

Source: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 214.201 Definitions.

For the purposes of this part:

"Agency," "Senior Executive Service position," "career appointee," "limited term appointee," "limited emergency appointee," and "noncareer appointee" have the meanings set forth in section 3132(a) of title 5, United States Code.

"Equivalent position" as used in section 3132(a)(2) of title 5, United States Code, means a position under any pay system where the level of the duties and responsibilities of the position and the rate of pay are comparable to that of a position at GS-16, -17, or -18, or at Executive Level IV or V.

"Senior Executive Service" has the meaning given that term by section 2101a of title 5, United States Code, and includes all positions which meet the definition in section 3132(a)(2) of title 5.

§ 214.202 Authority to make determinations.

(a) Each agency is responsible for determining, in accordance with Office of Personnel Management guidelines, which of its positions should be included in the Senior Executive Service.

(b) Agency determinations may be reviewed by the Office of Personnel Management to ensure adherence with law and regulation.

Subpart C—Exclusions

§ 214.301 Exclusions.

If not excluded from the Senior Executive Service by section 3132(a) (1) or (2) of title 5, United States Code, an agency, or unit thereof, may be excluded only under the provisions of section 3132 (c) through (f) of title 5.

Subpart D—Types of Positions

§ 214.401 Types of positions.

There are two types of positions in the Senior Executive Service:

(a) General positions, which may be filled by a career, noncareer, limited emergency, or limited term appointee.

(b) Career reserved positions, which may be filled only by a career appointee.

§ 214.402 Career reserved positions.

(a) The head of each agency is responsible for designating career reserved positions in accordance with the regulations in this section.

(b) A position shall be designated as a career reserved position if:

(1) The position (except a position in the Executive Office of the President):

(i) Was under the Executive Schedule, or the rate of basic pay was determined by reference to the Executive Schedule, on October 12, 1978;

(ii) Was specifically required under section 2102 of title 5, United States Code, or otherwise required by law to be in the competitive service; and

(iii) Entailed direct responsibility to the public for the management or operation of particular government programs or functions; or

(2) The position must be filled by a career appointee to ensure impartiality, or the public's confidence in the impartiality, of the Government.

(c) The head of an agency shall use the following criteria in determining whether paragraph (b)(2) of this section is applicable to an individual position:

(1) Career reserved positions include positions the principal duties of which involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

(i) Adjudication and appeals;

(ii) Audit and inspection;

(iii) Civil or criminal law enforcement and compliance;

(iv) Contract administration and procurement;

(v) Grants administration;

(vi) Investigation and security matters; and

(vii) Tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

(2) Career reserved positions also include:

(i) Scientific or other highly technical or professional positions where the duties and responsibilities of the specific position are such that it must be filled by a career appointee to insure impartiality, of the Government.

(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

(d) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(e) The minimum number of positions in the Senior Executive Service Governmentwide that must be career reserved is 3,571 as determined by the Director of the Office of Personnel Management under section 3133(e) of 5 U.S.C. To assure that this figure is met, the Office may establish a minimum number of career reserved positions for individual agencies. An agency must maintain or exceed this number unless it is adjusted by the Office.

[45 FR 62414, Sept. 19, 1980; 45 FR 83471, Dec. 19, 1980]

§ 214.403 Change of position type.

An agency may not change the designation of an established position from career reserved to general, or from general to career reserved, without the prior approval of the Office of Personnel Management.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

Sec.

230.201 Standards and requirements for agency personnel actions.
230.202 Withdrawal of agency authority.

Sec.

Subpart C—[Reserved]

Subpart D—Agency Authority to Take Personnel Actions in a National Emergency

230.401 Agency authority to take personnel actions in a national emergency disaster.
230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

§ 230.201 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by the Office of Personnel Management in the Federal Personnel Manual, and the provisions of any agreement developed between the Office and the agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of (a) an order of a Court or a settlement agreement, or (b) a decision or order of or a settlement agreement or an arbitral award reached under the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Office of Personnel Management, the agency shall follow the instructions in Federal Personnel Manual Chapter 296.

(5 U.S.C. 1104; Pub. L. 95-454; 92 Stat. 1120 and sec. 3(5) of the Civil Service Reform Act of 1978, Pub. L. 95-454; 92 Stat. 1112)

[46 FR 32425, June 23, 1981]

§ 230.202 Withdrawal of agency authority.

OPM may suspend or withdraw any authority granted by this chapter to an agency when it finds that the agency has not complied with the qualification standards issued by OPM, the instructions published by OPM in the Federal Personnel Manual, or the regulations in this chapter, or that the suspension or withdrawal is in the interest of the service for any other reason.

[33 FR 12408, Sept. 4, 1968]

Subpart C—[Reserved]

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

§ 230.401 Agency authority to take personnel actions in a national emergency disaster.

(a) Upon an attack on the United States, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as possible under the circumstances and shall be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) An employee may not acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

(e) Agencies shall maintain records of the actions taken under this section.

[35 FR 5173, Mar. 27, 1970]

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *Basic authority.* In a national emergency, as defined in the Federal Personnel Manual, an agency may make emergency-indefinite appointments to continuing positions (normally those expected to last longer than a year) when it is not in the public interest to make career or career-conditional appointments. Except as provided by paragraphs (b) and (c) of this section, the agency shall make appointments under this authority from appropriate registers of eligibles as long as there are available eligibles.

(b) *Appointment outside the register.* An agency may make emergency-indefinite appointments under this section outside registers of eligibles when all the following conditions are met:

(1) A number of vacancies must be filled immediately as a result of conditions created by the national emergency;

(2) Either the number of vacancies to be filled exceeds the number of immediately available eligibles or emergency conditions do not allow sufficient time to make this determination; and

(3) Available eligibles on registers are given prior or concurrent consideration for appointment to the extent possible within emergency time considerations.

(c) *Appointment noncompetitively.* An agency may give emergency-indefinite appointments under this section to the following classes of persons without regard to registers of eligibles and the provisions in § 332.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency in accordance with applicable requirements published in the Federal Personnel Manual;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and applications issued by the agency authorized to implement the law and Executive Order; and

(3) Former Federal employees eligible for reinstatement.

(d) *Tenure of emergency-indefinite employees.* (1) Emergency-indefinite employees do not acquire a competitive status on the basis of their emergency-indefinite appointments.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which it is made.

(e) *Trial period.* (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

(f) *Eligibility for within-grade increases.* An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

(g) *Applications of other regulations.* (1) The term "indefinite employee" as used in the following includes an emergency-indefinite employee: Section 316.801, Part 351, Part 353, Subpart G of Part 550, and Part 752 of this chapter.

(2) The selection procedures of Part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (b) of this section.

(3) Despite the provisions in § 831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of § 831.201 of this chapter.

(h) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54691, Sept. 21, 1979]

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

Subpart A—Personnel Management Responsibilities

Sec.
250.101 Delegation agreements.
250.102 Authority to take corrective action, suspend, or revoke agreement.

AUTHORITY: 5 U.S.C. 1104; Pub. L. 95-454; 92 Stat. 1120 and Sec. 3(5); Pub. L. 95-454; 92 Stat. 1120.

Subpart A—Personnel Management Responsibilities

§ 250.101 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency headquarters and OPM. The agreement will set forth the conditions for application of a particular authority (or authorities). This agreement will include a description of performance standards and the system of oversight to be used in agency and OPM monitoring of authority use. An agreement will be for an initial period not to exceed two years. Renewals may be for an indefinite period unless modified, suspended or revoked for abuse.

[44 FR 55131, Sept. 25, 1979]

§ 250.102 Authority to take corrective action, suspend, or revoke agreement.

If OPM finds that the agency has taken an action under a delegated agreement contrary to law, rule, regulation or standard, it may require the agency to take corrective action. If, in the judgment of OPM, the agency is not adhering to the provisions of the delegated agreement, it may suspend or revoke the agreement at any time.

[44 FR 55132, Sept. 25, 1979]

PART 293—PERSONNEL RECORDS

Subpart A—Basic Policies on Maintenance of Personnel Records

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Subpart B—Personnel Records Subject to the Privacy Act

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293.507 Maintenance and content of the Employee Medical Folder.
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293.509 Use of existing Employee Medical Folders upon transfer or reemployment.
293.510 Disposition of Employee Medical Folders.
293.511 Retention schedule.

AUTHORITY: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954-1958 Comp.; U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943-1948

Comp: 5 U.S.C. 2951(2) and 3301; and E.O. 12107.

SOURCE: 44 FR 65033, Nov. 9, 1979, unless otherwise noted.

Subpart A—Basic Policies on Maintenance of Personnel Records

§ 293.101 Purpose and scope.

(a) This subpart sets forth basic policies governing the creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records which the Office of Personnel Management requires agencies to maintain in the personnel management or personnel policy setting process.

(b) Agencies in the Executive Branch of the Federal Government are subject to specific Office of Personnel Management recordkeeping requirements to varying degrees, pursuant to statute, Office regulation, or formal agreements between the Office and agencies. This subpart applies to any department or independent establishment in the Executive Branch of the Federal Government, including a government corporation or Government controlled corporation, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency.

§ 293.102 Definitions.

In this part:

"Agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive Branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"Data subject" means the individual about whom the Office or agency is maintaining information in a system of records;

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

"Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials regardless of physical form or characteristics, containing data about an individual and required by the Office in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

"Maintain" includes collect, use, or disseminate;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained an used in the personnel management or personnel policysetting process. (For purposes of this part, this term is not limited just to those personnel records in a system of records and subject to the Privacy Act);

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, criminal history, or employment history;

"System of records" means a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 293.103 Recordkeeping standards.

(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because it may be useful; both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the Federal personnel management purposes required by statute, Executive order, or Office regulation.

(b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain. These standards are discussed in appropriate chapters of the Federal Personnel Manual. Before approval of any agency requests for changes in recordkeeping practices governed by the Federal Personnel Manual, the Office will examine the proposal or request in the context of such standards set forth by the agency in support of the proposal and in light of the personnel program area that requires these records.

§ 293.104 Collection of information.

(a) Any information in personnel records whether or not those records are in a system of records, used in whole or in part in making a determination about an individual's rights, benefits, or privileges under Federal personnel programs should, to the greatest extent practicable, be collected directly from the individual concerned. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are when:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) There are provisions made, to the greatest extent practicable, to vertify information collected from another party with the individual concerned.

§ 293.105 Restrictions on collection and use of information.

(a) First Amendment. Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the government.

(b) Social Security Number.

(1) Agencies may not require individuals to disclose their Social Security Number unless disclosure would be required;

(i) Under Federal statute; or

(ii) Under any statute, Executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the Social Security Number as a necessary means of verifying the identity of an individual.

(2) Individuals asked to voluntarily (circumstances not covered by paragraph (b)(1) of this section) provide their Social Security Number shall suffer no penalty or denial of benefits for refusing to provide it.

§ 293.106 Safeguarding information about individuals.

(a) To ensure the security and confidentiality of personnel records, in whatever form, each agency shall establish administrative, technical, and physical controls to protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. As a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.

(b) Personnel records must be stored in metal filing cabinets which are locked when the records are not in use, or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of security than these methods. Except for access by the data subject, only employees whose official duties require access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned on a timely basis.

(c) Disposal and destruction of personnel records shall be in accordance with the General Record Schedule issued by the General Services Administration for the records or, alternatively, with Office or agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.107 Special safeguards for automated records.

(a) In addition to following the security requirements of § 293.106 of this part, managers of automated personnel records shall establish administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. The safeguards must be in writing to comply with the standards on automated data processing physical security issued by the National Bureau of Standards, U.S. Department of Commerce, and, as a minimum, must be sufficient to:

(1) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(2) Minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personnel data;

(3) Prevent casual entry by unskilled persons who have no official reason for access to such data;

(4) Minimize the risk of an unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(5) Control the flow of data into, through, and from agency computer operations;

(6) Adequately protect identifiable data from environmental hazards and unneccessary exposure; and

(7) Assure adequate internal audit procedures to comply with these procedures.

(b) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes and disks must be erased prior to release of the media for reuse.

§ 293.108 Rules of conduct.

(a) *Scope.* These rules of conduct apply to all Office and agency employees responsible for creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records. The Office and agencies shall require that such employees are familiar with these and appropriate supplemental agency internal regulations.

(b) *Standards of Conduct.* Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).

(c) *Improper uses of personnel information.* Any Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a). Employees are prohibited from using personnel information not available to the public, gained through official duties, for commercial solicitation or sale, or for personal gain.

Subpart B—Personnel Records Subject to the Privacy Act

§ 293.201 Purpose.

The purpose of this subpart is to set forth the criteria to be used to determine when personnel records on individuals are subject both to the regulations contained in this part and to Office or agency regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. When personnel records are maintained within a system of records, the records are deemed to be within the scope of both the regulations in this part and Office or agency regulations implementing the Privacy Act.

§ 293.202 Records subject to Office or agency Privacy Act regulations.

When the Office of Personnel Management publishes in the Federal Register a notice of system of records for personnel records which are maintained by the agencies or by the Office, that system of records will be subject to the regulations in this part and also to the regulations in Part 297 of this chapter. When agencies publish a notice of system of records for personnel records required by the Office that are not included in the Office's notices, those agency systems of records will be subject both to the regulations contained in this part and to agency promulgated regulations that implement the Privacy Act.

§ 293.203 Review of Office or agency practices.

Reviews of agency personnel management policies and practices will be conducted to insure compliance with Office regulations. The Office may direct agencies to take whatever corrective action is necessary. Office or agency officials who have knowledge of violations of these regulations shall take whatever corrective action is necessary. Agencies shall list officials of the Office of Personnel Management as a routine user for personnel records to assist the Office in its oversight responsibilities.

Subpart C—Official Personnel Folder

Authority: 5 U.S.C. 552, 5 U.S.C. 552a; E.O. 12107 (December 28, 1978); 5 U.S.C. 1302, 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830; 3 CFR 1943-1948 Compilation.

Source: 50 FR 3309, Jan. 24, 1985, unless otherwise noted.

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder (OPF) for each employee occupying a position subject to this part, except as provided in § 293.306. Except as provided in the Federal Personnel Manual, there will be only one OPF maintained for each employee regardless of service in various agencies.

§ 293.303 Ownership of folder.

The OPF of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management (the Office).

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plan on which the most recent rating was based, may also be maintained in the Official Personnel Folder for each employee covered under the Performance Management and Recognition System under Part 540 of this chapter. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293-31.

[50 FR 35494, Aug. 30, 1985]

§ 293.305 Type of folder to be used.

Each agency shall use only OPFs from Office of Federal Supply and Services stock (Standard Form 66) for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the OPF pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new OPF. In the event that the prior service occurred wholly before April 1, 1947, the agency shall request any files or records that may be located in the Federal records storage center. The request shall note that because of the dates of service there will likely be no OPF. Any such file or record found for this individual shall be incorporated into the OPF being established for the employee.

(a) When a person for whom an OPF has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the OPF to the new employing agency.

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for PMRS employees' performance ratings of record including the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of PMRS employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder; and

(3) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293-31.

[50 FR 3309, Jan. 24, 1985, as amended at 50 FR 35494, Aug. 30, 1985]

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from Federal employment must be retained by the losing agency for 30 working days after separation, and may be retained for additional 60 days (90 days where administratively necessary, e.g., where an appeal or an allegation of discrimination is made or where an employee retires or dies in service). Thereafter, the OPF must be transferred to the General Services Administration, National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian Personnel Records) shall, upon request, transfer the OPF to the new employing agency.

[50 FR 3309, Jan. 24, 1985; 50 FR 8993, Mar. 6, 1985]

§ 293.308 Removal of temporary records from OPFs.

The employing agency having possession of an OPF shall remove temporary records from the OPF before it is transferred to another agency. For these and also for temporary records of their current employees, maintenance of the records shall be in accordance with General Records Schedule 1, promulgated by the General Services Administration.

§ 293.309 Reconstruction of lost OPFs.

Agencies will take necessary precautions to safeguard all OPFs. In the event of a lost or destroyed OPF, the current (or last, in the case of a former Federal employee) employing agency shall take the necessary action to reconstruct the essential portions of the OPF as specified in the Federal Personnel Manual or other Office instructions.

§ 293.310 Response to requests for information.

The Office, or an agency in physical possession of an OPF in response to a third party Freedom of Information Act (FOIA) request may disclose information as provided in this subpart. A current employee's request for access to his/her own OPF (also included are employee performance file system folders and files) that cites the FOIA, as with all stated Privacy Act requests made by current employees, shall be processed in accordance with agency Privacy Act procedures consistent with Office regulations in Part 297 of this chapter. All requests for their OPFs from former employees, and FOIA requests for former employee OPFs, shall be referred to the Office's regional or area office nearest to the location of the requester.

§ 293.311 Availability of information.

(a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public:

(1) Name;

(2) Present and past position titles and occupational series;

(3) Present and past grades;

(4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);

(5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and

(6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so interwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(b) The Office or agency will generally not disclose information where the data sought is a list of names, present or past position titles, grades, salaries, performance standards, and/or duty stations of Federal employees which, as determined by the official responsible for custody of the information:

(1) Is selected in such a way that would reveal more about the employee on whom information is sought than the six enumerated items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the FOIA.

(c) In addition to the information described in paragraph (a) of this section, a Government official may provide other information from these records (or automated equivalents) of an employee, to others outside of the agency, under a summons, warrant, subpoena, or other legal process; as provided by the Privacy Act (5 U.S.C. 552a(b)(4) through (b)(11)), under those Privacy Act routine uses promulgated by the Office, and as required by the FOIA.

Subpart D—Employee Performance File System Records

AUTHORITY: 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954-1958 Compilation; 5 CFR 7.2; E.O. 9830, 3 CFR 1943-1948 Compilation.

SOURCE: 47 FR 3080, Jan. 22, 1982, unless otherewise noted.

§ 293.401 Applicability of regulations.

This subpart applies to Executive agencies as defined in sections 105, 3132(a)(1) and 4301(1) of title 5, U.S. Code, including Military Departments (but not non-appropriated fund employees) as defined in section 102 of title 5, U.S. Code, and independent establishments as defined in section 104 of title 5, U.S. Code. Within those agencies, the requirements of this subpart apply to all employees occupying positions subject to civil service rules and regulations, including Senior Executive Service positions as defined in 5 U.S.C. 3132(a)(2).

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

(c)(1) Agencies shall provide their employees access to their performance files (automated and manual). Such a request for access shall be processed in accordance with established agency procedures, consistent with Office of Personnel Management regulations regarding access to records contained in Part 297 of this chapter. Such access shall be provided to the employee or to the employee's designated representative, and such records may also be disclosed to other officials of the agency who have a need for the documents in the performance of their duties.

(2) All other requests for performance documents made to agency officials (e.g., Freedom of Information Act requests or requests made under the "routine use" provisions of the Privacy Act) shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding disclosures of such records contained in Parts 293 and 297 of this chapter.

(3) Privacy Act requests for amendment of records maintained in this system shall be processed by the responsible agency official in accordance with agency procedures consistent with Office of Personnel Management regulations regarding amendment of records contained in Part 297 of this chapter.

(d) Agencies maintaining the EPF in an automated or microform system shall issue instructions that contain necessary procedures to ensure that the same requirements as in paragraph (c) of this section, relating to all manual records, are met.

[47 FR 3080, Jan. 22, 1982, as amended at 51 FR 8410, Mar. 11, 1986]

§ 293.403 Contents of employee performance files.

(a) A decision on what constitutes a performance-related document within the meaning of this subpart rests with the agency. Agency implementing instructions, for both incumbents of the Senior Executive Service and other positions, shall provide specific written guidance of the description of what constitutes the agency's official performance-related forms and documents.

(b) Agency implementing instructions describing such records shall indicate where and for how long they are retained and how and when they are to be destroyed. Such instructions shall also describe what records are considered to be performance-related (as specifically as is feasible) and shall include all performance-related records maintained as a system of records within the meaning of the Privacy Act. Such records would generally include:

(1) Any form or other document which records the performance appraisal, including appraisals leading to merit pay determinations.

(2) Any form or other document used by rating officials to recommend a personnel action affecting an employee (including a request for personnel action document, but only when the action is not effected) when the basis for the action (e.g., removal, reassignment, demotion, promotion, or merit pay or other performance award) is performance-related.

(3) Recommendations for training that are performance-related. (Documentation of completion of or attendance at training in excess of 8 hours is to continue to be filed in the OPF.)

(4) Any form or other document furnished in support of recommended actions such as those listed in paragraph (b)(2) of this section and the agency's final decision on the matter (e.g., a recommendation for merit pay or an agency decision to grant only one-half the comparability pay adjustment).

(5) Any form or other document which the rating official is required by the agency to keep during an appraisal period (e.g., quality control records, production records, or similar records used to track employee performance during the appraisal period.)

(6) Any form or other document regarding Performance Review Board decisions, including supporting documentation and any transcript of hearings or testimony from witnesses.

(7) Any form or other document regarding decisions or recommendations of agency Executive Resources Boards related to performance appraisal or actions resulting from performance appraisals.

(8) Appraisals of potential (e.g., in connection with an agency's merit promotion procedures) if agency implementing instructions specifically require or permit retention of a copy.

(9) Individual development plans.

(10) Copies of licenses, certificates of proficiency, or similar documents required of the position.

(c) General information about the employee, i.e., identification data, information concerning Federal and non-Federal employment experience, and information about any training programs the employee participated in may, if an agency deems it appropriate, be retained in this system.

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee who

changes positions, shall be as agencies prescribe and consistent with § 293.405(a).

(3) Appraisals of unacceptable performance, where a notice of proposed demotion or removal is issued but not effected, and all documents related thereto, manual and automated, pursuant to 5 U.S.C. 4303(d) must be destroyed after the employee completes one year of acceptable performance from the date of the written advance notice of the proposed removal or reduction in grade notice. Under conditions specified by an agency, and earlier destruction date is permitted and destruction must be no later than 30 days after the year is up.

(b) Performance records for Senior Executive Service appointees, including those serving under a Presidential appointment under 5 U.S.C. 3392(c), are to be retained as follows:

(1) Pursuant to 5 U.S.C. 4314(b) (3) and (4), Senior Executive Service appointees shall have their performance-related records maintained for five consecutive years (from the date the appraisal is issued) beginning with the effective date of appointment, including individuals receiving appointments pursuant to 5 U.S.C. 3593(b).

(2) When an appointee of the Senior Executive Service moves to another position in the Service, either with the same or a different agency, all appropriate performance-related documents five years old or less shall be forwarded in the Employee Performance File along with the individual's OPF.

(3) When an employee in the Senior Executive Service accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance file shall be retained as long as the employee remains employed under that Presidential appointment. When the appointment ends, and the individual does not return to the Senior Executive Service, the employee's performance file shall be destroyed in accordance with agency procedures.

(c) Where any performance-related document is needed in connection with an ongoing administrative, negotiated, quasi-judicial, or judicial proceeding, and it continues to be retained in this system rather than another system, it may be retained for as long as necessary beyond the retention schedules identified in paragraphs (a) and (b) of this section.

(d) Screening and purging of folders/envelopes and rating official's work files for the purpose of compliance with these retention schedules shall be through any agency process insuring consistency with the requirements.

[47 FR 3080, Jan. 22, 1982, as amended at 51 FR 8411, Mar. 11, 1986]

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in Part 430 of this chapter. Also, the "losing" office will purge from the OPF all performance ratings and performance plans that are more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293-31.

(b) Consistent with transfer instructions pertaining to SES positions contained in this part, employee performance files shall be forwarded to gaining agencies at the same time as the OPF (5 CFR 293.207).

(c) Consistent with retention schedules promulgated in § 293.404, destruction of performance-related records shall be in accordance with agency procedures (e.g., by shredding or burning).

(d) If a former employee returns to an agency, a new employee performance file will be created unless the prior file for this employee is still available. The original file may be reactivated provided that, consistent with the retention schedules and destruction requirements promulgated in this subpart, the contents are properly disposed of.

(e)(1) It is the responsibility of the agency Personnel Director to insure the maintenance of employee performance files in accordance with this subpart and subparts A and B of this part, Part 297 of this title, and with Office of Personnel Management guidance.

(2) This responsibility may be delegated in writing to other agency officials as appropriate. Implementing guidelines for agency performance appraisal systems shall provide written instructions for compliance with Office rules and procedures as well as descriptions of the documents and where they are retained, and shall ensure that records are retained in accordance with the provisions of § 293.402.

[47 FR 3080, Jan. 22, 1982, as amended at 51 FR 8411, Mar. 11, 1986]

§ 293.406 Disclosure of records.

Disclosure as used here means the furnishing of the record to someone other than the individual to whom the record pertains, his/her designated representative, or to an agency official who needs the information in the performance of official duties. Disclosure of information from this file system shall be made only as permitted by the Privacy Act (5 U.S.C. 552a(b)) and, with regard to the routine use provisions of that section, only under a routine use published by the Office for the system of records covering these records. However, to the extent that this system contains the data identified as being available to the public in § 293.311, for most Federal employees and under the same restrictions listed in that section, that information shall also be made available to the public from this system.

Subpart E—Employee Medical File System Records

SOURCE: 51 FR 33235, Sept. 19, 1986, unless otherwise noted.

§ 293.501 Applicability of regulations.

The applicability of this subpart is identical to that described in § 293.301.

§ 293.502 Definitions.

For the purpose of this Subpart—

"Employee" is defined at 5 U.S.C. 2105 and excludes student volunteers and contractor employees.

"Employee Assistance and Counseling Record" means the record created when an employee participates in an agency assistance/counseling program (e.g., drug or alcohol abuse or personal counseling programs under Pub. L. 91-616, 92-255, and 79-658, respectively).

"Employee Exposure Record" (which is to be interpreted consistent with the term as it is defined at 29 CFR 1910.20(c)(8)) means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents (as defined at 29 CFR 1910.20(c)(11)):

(a) Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(b) Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

(c) Matarial safety data sheets; or

(d) Any other record, in the absence of the above, which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance of harmful physical agent.

"Employee Medical File System (EMFS)" means the agency's complete system (automated, microformed, and paper records) for employee occupational medical records.

"Employee Medical Folder (EMF)" means a separate file folder (normally SF 66-D) established to contain all of the occupational medical records (both long-tern and short-term records) designated for retention, which will be maintained by the employing agency during the employee's Federal service.

"Epidemiological Record" means a record maintained by an agency or subelement thereof as a result of an official medical research study conducted under the authority of the agency.

"Implementing instructions" means any form of internal agency issuance that provides the guidance required in § 293.503 and any other guidance the agency deems appropriate.

"Occupational Medical Record" means an occupation-related, chronological, cumulative record, regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, or automatic data processing media), of information about health status developed on an employee, including personal and occupational health histories and the opinions and written evaluations generated in the course of diagnosis and/or employment-related treatment/examination by medical health care professionals and technicians. This definition includes the definition of medical records at 29 CFR 1910.20(c)(6); when the term "Occupational Medical Record" is used in these regulations, it includes "Employee Exposure Records" (as that term is defined in this section) and occupational illness, accident, and injury records.

"Non-occupational/Patient Record" means a record of treatment or examination, created and maintained by a health care facility, when the person is admitted to or voluntarily seeks treatment at the health care facility for non-job-related reasons. Records maintained by an agency dispensary are patient records for the purposes of these regulations except when such records result as a condition of employment or relate to an on-the-job occurrence. In these cases, the records are "Occupational Medical Records" as defined herein.

"Non-personal Record" means any agency aggregate or statistical record or report resulting from studies covering employees or resulting from studies or the work-site environment.

§ 293.503 Implementing instructions.

Agencies must issue written internal instructions describing how their EMFS is to be implemented. These instructions must—

(a) Describe overall operation of the system within the agency including the designation of the agency official who will be responsible for overall system management. When the agency has a medical officer, that individual must be named the system manager. The system manager may then designate others within the agency to handle the day-to-day management of the records, e.g., the custodian of the records at the site where they are maintained;

(b) Be prepared with joint participation by agency medical, health, and safety, and personnel officers;

(c) Describe where and under whose custody employee occupational medical records will be physically maintained;

(d) Designate which agency office(s) will be responsible for deciding when and what occupational medical records are to be disclosed either to other agency officials or outside the agency;

(e) Ensure proper records retention and security, and preserve confidentiality of doctor/patient relationships;

(f) Provide that when the agency is requesting an EMF from the National Personnel Records Center (NPRC), the request form will show the name, title, and address of that agency's system manager or designee, who is the only official authorized to receive the EMF;

(g) Be consistent with Office regulations relating to personnel actions when medical evidence is a factor (5 CFR Parts 339, 432, 630, 752, and 831);

(h) Provide guidance on how an accounting of any record disclosure, as required by the Privacy Act (5 U.S.C. 552a(c)), will be done in a way that ensures that the accounting will be available for the life of the EMF;

(i) When long-term occupational medical records exist, provide for the creation of an EMF for an employee transferring to another agency or leaving Government service, and whether an EMF is to be established at the time an employee is being reassigned within the agency;

(j) Ensure a right of access (consistent with any special Privacy Act handling procedures invoked) to the records, in whatever format they are maintained, by the employee or a designated representative;

(k) Ensure that a knowledgeable official determines that all appropriate long-term occupational medical records are in an EMF prior to its transfer to another agency, to the NPRC, or to another office within the same employing agency;

(l) Ensure that all long-term occupational medical records an agency receives in an EMF are maintained, whether in that same EMF or by some other agency procedure, and forwarded to a subsequent employing agency or to NPRC;

(m) Ensure that, if occupational medical records are to be physically located in the same office as the Official Personnel Folder (OPF), the records are maintained physically apart from each other;

(n) Sets forth a policy that distinguishes, particularly for purposes of records disclosure, records in the nature of physician treatment records (which are generally not appropriate for disclosure to non-medical officials) from other medical reports properly available to officials making management decisions concerning the employee;

(o) Provide guidance that distinguishes records properly subject to this part from those (e.g., Postal Service or Foreign Service employee medical records) subject to different rules, particularly in Privacy Act and Freedom of Information Act matters;

(p) Ensure that guidance regarding the processing of Privacy Act matters is consistent with Office regulations implementing the Privacy Act at 5 CFR Parts 293 and 297; and

(q) Ensure that no security classification is assigned to an EMF by including therein any occupational medical record that has such a classification. In this regard, the agency creating the classified medical record is required to retain it separately from the EMF while placing a notice in the EMF of its existence and describing where requests for this record are to be submitted.

§ 293.504 Composition of, and access to, the Employee Medical File System.

(a) All employee occupational medical records (which exclude employee assistance/counseling, patient, non-personal, and epidemiological records) whether they are maintained in an automated, microform, or paper mode, and wherever located in the agency, are part of the EMFS. The records maintained in the EMFS are part of a Governmentwide Privacy Act system of records established by the Office. Agencies have the responsibility to ensure that such documents are maintained in accordance with the Office's Privacy Act regulations in Part 297 of this chapter, with the agency's instructions implementing those regulations, and with the retention schedule for employee medical records stipulated in § 293.511. While non-occupational/patient records pertaining to an employee are not required to be included as a record within the EMFS, under certain conditions to be discussed in subsequent FPM guidance, copies of such records are occupationally-related and, in those cases, may be included in the system.

(b) Agencies must provide employees access to their own EMFS records consistent with Office regulations contained in § 297.204(c) of this chapter. When unexcepted access can be provided directly to the employee, such unexcepted access must also be provided to any representative specifically designated in writing by the employee to receive the record. Disclosure of an employee's occupational medical records to agency officials (both medical and non-medical) will be granted only when the specific information sought is needed for the performance of official duties.

(c) Other agencies for employee occupational medical records made to the custodian of the records must be processed in accordance with the disclosure provisions of the Privacy Act (5 U.S.C. 552a(b)) and the Office's regulations at Part 297 of this chapter.

(d) Processing of a Privacy Act request for amendment of any EMFS record must be consistent with the Office's regulations contained in Part 297 of this chapter regarding amendment of records.

§ 293.505 Establishment and protection of Employee Medical Folder.

(a) As required by these rules, agencies must establish an EMF when the employee leaves the employing agency and occupational medical records for that employee exist; agencies may also establish an EMF (if none presently exists) for active employees if the agency chooses. An agency must request the transfer of an existing EMF (and maintain that EMF as received) at the same time it requests the transfer of an employee's OPF using the procedures contained in § 293.306.

(b) Neither the original occupational medical record nor duplicates are to be retained in the OPF. Prior to the establishment of an EMF for a separating employee, when such records are created, they must be maintained physically apart from the OPF, although they may be kept in the same office.

(c) Records in an EMF, whether or not located in an office other than where the OPF is maintained, must be properly safeguarded using procedures ensuring equal or greater levels of protection as those in § 293.106. Disclosures must be made only to those authorized to receive them, as described in § 293.504(b), and employees must be able to ascertain from agency implementing instructions the location of all of their medical records. An EMF must be under the control of a specifically designated medical, health, safety, or personnel officer as prescribed in the agency's implementing internal procedures.

§ 293.506 Ownership of the Employee Medical Folder.

The EMF of each employee in a position subject to civil service rules and regulations is part of the records of the Office. When the EMF also contains occupational medical records created during employment in a position not subject to the civil service (e.g., with the Postal Service), the EMF is then part of the records of both the Office and the employing agency.

§ 293.507 Maintenance and content of the Employee Medical Folder.

The agency head must maintain all appropriate employee occupational medical records in the EMFS. When an EMF is established for an employee, as required in § 293.504, the agency's EMFS must be searched to obtain all records designated for retention in the EMF.

§ 293.508 Type of folder to be used.

Each agency must use a folder that (a) has been specifically identified as the EMF and issued through Federal Supply Service contracts (Standard Form 66 D); (b) has been authorized as an exception to this form by the Office for use by a specific agency; or (c) in the case of an EMF containing records under joint control of the Office and another agency, an exception to the use of this form that has been jointly authorized.

§ 293.509 Use of existing Employee Medical Folders upon transfer or reemployment.

The requirements of § 293.306, regarding the use of existing OPFs, apply to the use of existing EMFs upon the employee's transfer to or reemployment in a new employing agency.

§ 293.510 Disposition of Employee Medical Folders.

(a) When an employee transfers to another Federal agency, the EMF must be transferred to the gaining agency at the same time as the employee's OPF. The EMF is to be addressed only to the gaining agency's designated manager (medical, health, safety, or personnel officer, or other designee) of the EMFS.

(b) When an employee is separated from the Federal service, the EMF must be forwarded to the NPRC with the OPF, using the instructions in Part § 293.307.

(c) When a former Federal employee is re-employed by an agency, and that agency believes that an EMF exists, either at the last employing agency or at the NPRC, the agency will request the EMF, but no sooner than 30 days after the date of the new appointment. No EMFs will be routinely retrieved during the initial review process (as is done with the OPF) except when authority exists for the agency to require a medical evaluation prior to reaching a decision on employability. EMFs are to be transferred by the NPRC only to the agency-designated manager (medical, health, safety, or personnel, or other designee) shown on the request form.

§ 293.511 Retention schedule.

(a) Temporary EMFS records must not be placed in a newly-created EMF for a separating employee and must be removed from an already existing EMF before its transfer to another agency or to the NPRC. Such records must be disposed of in accordance with General Records Schedule (GRS) 1, item 21, issued by the National Archives and Records Administration (NARA).

(b) Occupational Medical Records considered to be long-term records must be maintained for the duration of employment, plus 30 years or for as long as the OPF is maintained, whichever is longer. Therefore, upon separation, the records must be provided to the employee's new agency, or they must be transferred to the NPRC, which will dispose of them in accordance with GRS 1, item 21, issued by NARA.

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

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AUTHORITY: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502, as amended by the Freedom of Information Reform Act of 1986, and Pub. L. 99-570.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

SOURCE: 54 FR 25094, June 13, 1989, unless otherwise noted.

§ 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by § 294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the "Uniform Freedom of Information Act Fee Schedule and Guidelines" issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

"Direct costs" means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

"Disclose or disclosure" means making records available, on request, for examination and copying, or furnishing a copy of records.

"Duplication" means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are paper, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk).

"Records," "information," "document," and "material" have the same meaning as the term "agency records" in section 552 of title 5, United States Code.

"Review" means the process of initially examining documents located in response to a request to determine whether any portion of any document located may be withheld. It also includes processing documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

"Search" means the time spent looking for material that is responsive to a request, including page-by-page, or line-by-line identification of material within documents. The definition assumes that searches will be carried out in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester.

§ 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures contained in this section to assign requesters to categories. The four categories established by 5 U.S.C. 552(a) are requests for commercial use, requests for non-commercial use made by educational or non-commercial scientific institutions, requests for non-commercial use made by representatives of the news media, and all others.

(a) *Request for commercial use.* A "commercial use request" is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) *Request for non-commercial use made by an educational or non-commercial scientific institution.* OPM will include requesters in one of the two categories described in paragraphs (b) (1) and (2) of this section when the request is being made as authorized by, and under the auspices of, a qualifying institution; and the records are sought, not for a commercial use, but in furtherance of scholarly or scientific research.

(1) "Educational institution" refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) *Request from a representative of the news media.* "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as representatives of the news media if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commercial use. If a person meets the other qualifications for inclusion, OPM will not apply the term "commercial use" to his or her request for records in support of a news dissemination function.

(d) *Requests from others.* The category "all others," consists of any requesters not covered by paragraphs (a), (b), or (c) of this section. However, as provided by § 294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§ 294.104 Clarifying a requester's category.

(a) *Seeking clarification of a requester's category.* OPM may seek additional clarification before assigning a person to a specific category if—

(1) There is reasonable cause to doubt the requester's intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt about qualifications that may affect the fees applicable or the services rendered under § 294.109.

(b) *Prompt notification to requester.* When OPM seeks clarification as provided by paragraph (a) of this section, it will provide prompt notification either by telephone or in writing of the information or materials needed.

(c) *Effect of seeking clarification on time limits for responding.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received until the official who is assigned responsibility for making a decision on releasing the records has—

(1) Received any additional clarification sought under paragraphs (a) and (b) of this section; and

(2) Determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section.

§ 294.105 Access to the requester's own records.

When the subject of a record, or a duly authorized representative of the subject, requests his or her own records from a Privacy Act system of records, as defined by 5 U.S.C. 552a (a)(5), and the record is maintained so that it is retrieved by the subject's name or other personal identifier, OPM will process the request under the Privacy Act procedures in Part 297 of this chapter.

§ 294.106 Index of information.

(a) OPM publishes OPM Document No. 1, "Index to Information" annually and issues supplements during the year when there is a sufficient volume of new or revised material. This index contains material published and offered for sale or available for public inspection and copying.

(b) A copy of this index is available at no cost from the—

Internal Distribution Subunit, Office of Personnel Management, Room B443, 1900 E Street NW., Washington, DC 20415.

(c) OPM indexes material for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Index to Information" more frequently than annually because of the small number of revisions that occur.

§ 294.107 Places to obtain records

(a) Address requests for OPM records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the address below and the official's title.

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

Send to—	For subject-matter about—
Associate Director for Administration	Administrative services; information management, financial management; personnel.
Associate Director for Retirement and Insurance	Retirement; life and health insurance.
Associate Director for Personnel Systems and Oversight	Personnel management in agencies; pay; position classification; wage grade jobs; performance management; employee and labor relations.
Assistant Director for Workforce Information	Government-wide personnel statistics; official personnel and employee medical folders.
Associate Director for Investigations	Background investigations and related records on individuals.
Associate Director for Career Entry and Employee Development	Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped; training.
Director, Washington Area Service Center	Examining, testing, and training operations in Washington, DC.
Director, Office of Government Ethics	Ethics and conflict of interest.
Director, Office of Executive Personnel	Senior Executive Service.

(c) Direct requests for records on subjects not specifically referred to in this section or in the Index to—

Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street NW., Washington, DC 20415.

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

- Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303-3019.
- Chicago Region—John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, IL 60604.
- Dallas Region—1100 Commerce Street, Dallas, TX 75242.
- Philadelphia Region—William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106-1596.
- San Francisco Region—211 Main Street, 7th Floor, San Francisco, CA 94105.

(e) *When an organization does not have records in its custody.* When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will normally either—

(1) Retrieve the records from the organization that has possession of them; or

(2) Promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(f) *Applying the time limits.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(g) *Records from other Government agencies.* When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) *Creating records.* If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other existing records would reasonably respond to the request or portions of it, OPM may provide these. If fees as provided in § 294.109 apply to any alternative records, OPM will advise the requester before providing the records.

§ 294.108 Procedures for obtaining records.

(a) *Mailing or delivering a request.* Any person may ask for records under section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in § 294.107, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.

(b) *Proper marking.* Each request for records should have a clear and prominent notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) *Contents of request letter.* A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record

seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) *Medical records.* OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual's mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) *Publications.* If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office), OPM will explain where a person may review and/or purchase the publications.

(f) *Responses within 10 working days.* Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B)), OPM will determine whether to disclose or deny records within 10-working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the fees required, if any, as prescribed by § 294.109 of this part.

§ 294.109 Fees.

(a) *Applicability of fees.* OPM entities will furnish, without charge, reasonable quantities of material that they have available for free distribution to the public. Subject to payment of fees as specified in this section, OPM may furnish other material. These fees are intended to recoup the full allowable direct costs of providing services.

(b) *Payment of fees.* Individuals may pay fees by check or money order, payable to the Office of Personnel Management.

(1) OPM will not assess fees for individual requests if the total charge would be less than $25, except as provided in paragraph (b)(5) of this section.

(2) If a request may reasonably result in a fee assessment of more than $25, OPM will not release records unless the requester agrees to pay the anticipated charges.

(3) If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester's needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in § 294.107 of this part, OPM ordinarily responds to Freedom of Information Act requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response the component has prepared.

(5) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(6) If fees for document search are authorized as provided in paragraph (f) of this section, OPM may assess charges for an employee's (or employees') time spent searching for docu-

ments and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure.

(7) Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(c) *Payment of fees in advance.* If OPM estimates or determines that fees are likely to exceed $250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurances of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay any fee charged in a timely manner, OPM will require full payment of all fees in advance. In this section, an untimely payment is considered to be a payment that is not made within 30 days of the billing date.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records, until that individual has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(4) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that he or she must pay the required fee within 30 days and that OPM will not further process the request until it receives payment.

(5) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(6) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Pub. L. 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

(d) *Waiver of fees.* OPM will furnish documents under this subpart without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and it is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(2) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, OPM will consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(ii) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) An OPM official may deny a waiver of fees or a request for a reduced fee without further consideration if the request does not include the following information:

(i) A clear statement of the requester's interest in the document(s);

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from OPM's release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(4) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) A requester may appeal the denial of a waiver request as provided by § 294.110 of this part.

(e) *Rates used to compute fees.* The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (f) of this section, the first-100-pages of paper copies exception in paragraph (g) of this section, and the first-2-hours manual records search exception in paragraph (h) of this section.

Employee time.	Salary rate plus 16% to cover benefits.
Photocopies (up to 8½"x14").	$0.13 a page.
Printed materials, per 25 pages or fraction thereof.	$0.25.
Computer time.	Actual direct cost.
Supplies and other material.	Actual direct cost.
Other costs not identified above.	Actual direct cost.

(f) *Fee components by category of user.* For the purpose of assessing fees under this section, requests may have three cost components. These are the cost of document search, the cost of duplication, and the cost of review. When computing the fee applicable to a request, OPM will apply the rates in paragraph (e) of this section to the cost components that apply to the requester's category. Cost components apply to categories of requesters as follows:

(1) A commercial use requester. Pays actual direct costs for document search, duplication, and review.

(2) A requester from an educational and non-commercial scientific institution and a representative of the news media —Pays actual direct costs for document duplication when records are not sought for commercial use. (Requesters in this category do not pay for search and review.)

(3) All other requesters. Pay actual direct costs for document search and duplication. (Requesters in this category do not pay for review.)

(g) *First 100 pages of paper copies.* There will be no charge to categories of requesters included in paragraphs (f)(2) and (3) of this section for the first 100 pages of paper copies, size 8½" by 11" or 11" by 14" or for a reasonable substitute for this number of copies. An example of a reasonable substitute is a microfiche containing the equivalent of 100 pages.

(h) *First 2 hours of manual records search.* OPM will not charge requesters in the "all other" category for the first 2 hours of manual records search. If a person asks for records from a computerized data base, OPM will use the following formula, promulgated by the Office of Management and Budget, to provide the equivalent, in computer records search time, of 2 hours of manual records search.

(1) OPM will add the hourly cost of operating the central processing unit that contains the record information

to the operator's hourly salary plus 16 percent.

(2) When the cost of a search (including the operator's time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search (i.e., the operator), OPM will begin assessing charges for computer search.

§ 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the—

Deputy Director, Office of Personnel Management Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

§ 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

[50 FR 3310, Jan. 24, 1985]

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the Federal Personnel Manual or the FEDERAL REGISTER, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

[50 FR 3310, Jan. 24, 1985]

Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in Title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:

Type of information	Location
Classification appeal records	511.616.
Classified information	175.101.
Employee performance folders	293.311.
Examination and related subjects records.	300.201.
Grade and pay retention records	536.307.
Investigative records	736.105.
Job grading reviews and appeals records.	532.707.
Leave records	297 Subpart E.
Medical information	297.204 and 297 Subpart E.
Official Personnel Folders	293.311.
Privacy and personnel records	297.
Retirement	831.106.

[54 FR 25098, June 13, 1989]

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

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Subpart E—Exempt Records

297.501 Exemptions.

AUTHORITY: Sec. 3, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 53 FR 1998, Jan. 26, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 297.101 Purpose and scope.

This part sets forth the regulations of the U.S. Office of Personnel Management (the Office) to govern the maintenance, protection, disclosure, and amendment of records within the systems of records as defined by the Privacy Act of 1974 (5 U.S.C. 552a), Pub. L. 93-579.

§ 297.102 Definitions.

In this part, the terms "agency," "individual," "maintain," "record," "statistical records," and "systems of records" have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by, the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a, as amended;

"Agency" means any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation, of Government-controlled corporation, except those specifically excluded from the Office recordkeeping requirements by statute, this title, or formal agreement between the Office and the agency.

"Amendment" means the correction, addition, deletion, or destruction of a record or specific portions of a record;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing personal review of a record, or a copy thereof, to someone other than the data subject or the data subject's authorized representative, parent, or legal guardian;

"Office" means the U.S. Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System manager" means the Office or agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by the Office.

§ 297.103 Designations of authority by system manager.

The responsible Office system manager having jurisdiction over a system of records may designate in writing an Office employee to evaluate and issue the Office's decision on Privacy Act matters relating to either internal, central, or Governmentwide systems of records.

§ 297.104 Types of records.

The Office manages three generic types of personnel records systems:

(a) Internal systems of records are under the Office's physical control and are established and maintained by the Office solely on its own employees and, when appropriate, on others in contact with the Office regarding matters within its authority.

(b) Centralized systems of personnel records are physically established and maintained by the Office with regard to most current and former Federal employees and some applicants for Federal employment.

(c) Governmentwide systems of personnel records are maintained by the Office, and through Office delegations of authority, by Federal agencies with regard to their own employees or applicants for employment. Although they are Office records, they are in the physical custody of those agencies. Though in the physical custody of agencies, the Office retains authority under its record management authority and under the Privacy Act to decide appeals of initial agency determinations regarding access to and amendment of material in these systems.

§ 297.105 Agency and Office responsibilities for systems of records and applicability of the regulations.

(a) These regulations apply to processing requests from both current and former Office employees for records contained in internal, central, and Governmentwide systems of records managed by the Office.

(b) Agencies are solely and totally responsible for processing requests regarding records maintained in their internal systems of records. Agency regulations, and not these Office regulations, govern the implementation of the Privacy Act for agency internal systems; there is no right of appeal to the Office from an agency's determination regarding its internal agency records.

(c) For records maintained in the Office's central systems of records, the data subject should contact the appropriate Office system manager concerning Privacy Act matters. These regulations will apply to inquiries regarding records located in the central systems of records.

(d) For records maintained within the Office's Governmentwide systems of records, each agency is responsible, unless specifically excepted by the Office, for responding to initial Privacy Act access and amendment requests from its own current employees. For records in Office Governmentwide systems, including those in Official Personnel Folders, Employee Performance Folders, and Employee Medical

Folders, the Office is responsible for responding to initial Privacy Act access and amendment requests from former Federal employees.

(e) The procedures in this part apply to all such requests. The procedures in this part also apply to appeals from an agency initial determination regarding access to or amendment of records contained in the Office's Governmentwide systems of records.

(f) The Office follows the procedures in this part when—

(1) Processing initial requests regarding access to or amendment of records by its own employees and others that the Office is maintaining information on in its systems of records, including requests from former employees of an agency whose records properly reside in an Office Governmentwide system of records.

(2) Processing Privacy Act appeals regarding access to and amendment of records generated by another Federal agency, but which are contained in the Office's Governmentwide systems of records, after an agency has issued the initial decision.

(3) Processing initial requests and appeals concerning access to and amendment of records contained in the central systems of records.

(g) For requests concerning records and material of another agency that are in the custody of the Office, but not under its control or ownership, the Office reserves the right to either refer the request to the agency primarily responsible for the material or to notify the individual of the proper agency that should be contacted.

§ 297.106 Contact point for Privacy Act matters.

To determine what records the Office maintains in its system of records, requesters must write to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Using the Office's response, requesters can contact the particular system manager indicated in the Office's notices of its systems published in the FEDERAL REGISTER for further assistance in determining if the Office maintains information pertaining to them.

Subpart B—Request for Access

§ 297.201 General provisions.

(a) Individual's requesting access to records pertaining to them that are maintained in a system of records should submit a written request to the appropriate system manager and state that the request is being made pursuant to the Privacy Act of 1974.

(b) The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate and,

(4) Date and place of birth.

(c) An individual may be represented by another when requesting access to records.

§ 297.202 Methods of access.

(a) The methods for allowing access to records, when such access has been granted by the Office or agency, are:

(1) Inspection in person in the designated office during the hours specified by the Office or agency; or

(2) Transfer of records at the option of the Office or agency to another more convenient Federal facility.

(b) Generally, Office of Personnel Management offices will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by the Office and may require payment of any fee levied in accordance with the Office's established fee schedule.

(c) When the requester seeks to obtain original documentation, the Office reserves the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the system manager or designee. An agency should consult with the Office when it receives a request for original documentation. Section 2701(a) of title 18 of the United States Code makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

§ 297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.

(a) A parent, legal guardian, or custodian of a minor, upon presentation of suitable personal identification, may access on behalf of a minor any record pertaining to the minor in a system of records maintained by the Office.

(b) A legal guardian, upon presentation of documentation establishing guardianship, may access on behalf of an individual declared to be incompetent by a court of competent jurisdiction, any record pertaining to that individual in a system of records maintained by the Office.

(c) Minors are not precluded from exercising personally those rights provided them by the Privacy Act.

§ 297.204 Access by the representative of the data subject.

A record may be disclosed to a representative of the individual to whom the record pertains after the system manager receives written authorization from the individual who is the subject of the record.

§ 297.205 Access to medical records.

When a request for access involves medical or psychological records that the system manager believes requires special handling, the requester should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to the data subject when appropriate.

§ 297.206 Fees charged by the Office.

(a) No fees will be charged for search and review time expended by the Office to produce a record, or for making a photostatic copy of the record, or for having it personally reviewed by the data subject, when a record is retrieved from a system of records pertaining to that data subject. Additional copies provided may be charged under the Office's established fee schedule.

(b) When the fees chargeable under this section will amount to more than $25, the requester will be notified and payment of fees may be required before the records are provided.

(c) Remittance should be made by either a personal check, bank draft, or a money order that is made payable to the U.S. Office of Personnel Management and addressed to the appropriate system manager.

§ 297.207 Denials of access and appeals with respect to such denials.

(a) If an access request is denied, the Office or agency response will be in writing and will include a statement of the reasons for the denial and the procedures available to appeal the denial, including the name, position title, and address of the Office official responsible for the review.

(b) Nothing in this part should be construed to entitle a data subject the right to access any information compiled in reasonable anticipation of a civil action or proceeding.

(c) For denials of access made under this subpart, the following procedures apply:

(1) For initial denials made by an agency, when the record is maintained in an Office Governmentwide system of records, a request for adminstrative review should be made only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(2) For denials initially made by an Office official, when a record is maintained in an internal or central system of records, a request for administrative review should be made to the Information and Privacy Appeals Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(3) Any administrative review decision that either partially or fully supports the initial decision and denies access to the material the individual originally sought should state the requester's right to seek judicial review of the final administrative decision.

§ 297.208 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date on which the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart C—Amendment of Records

§ 297.301 General provisions.

(a) Individuals may request, in writing, the amendment of their records maintained in an Office system of records by contacting the appropriate system manager. The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate; and

(4) Date and place of birth.

(b) An individual may be represented by another party when requesting amendment of records.

(c) A request for amendment should include the following:

(1) The precise identification of the records to be amended;

(2) The identification of the specific material to be deleted, added, or changed; and

(3) A statement of the reasons for the request, including all available material substantiating the request.

(d) Requests for amendment of records should include the words "PRIVACY ACT AMENDMENT REQUEST" in capital letters on both the envelope and at the top of the request letter.

(e) A request for administrative review of an agency denial to amend a record in the Office's systems of records should be addressed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(f) A request for administrative review of a denial to amend a record by an Office official should be addressed to the Information and Privacy Appeals Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(g) The burden of proof demonstrating the appropriateness of the requested amendment rests with the requester; and, the requester must provide relevant and convincing evidence in support of the request.

§ 297.302 Time limits.

The system manager should acknowledge receipt of an amendment request within 10 working days and issue a determination as soon as practicable. This timeframe begins when the request is received by the proper Office or agency official.

§ 297.303 Applicability of amendment provisions.

(a) The amendment procedures are not intended to allow a challenge to material that records an event that actually occurred nor are they designed to permit a collateral attack upon that which has been or could have been the subject of a judicial, quasi-judicial, or administrative proceeding. The amendment procedures are also not designed to change opinions in records pertaining to the individual.

(b) The amendment procedures apply to situations when an occurrence that is documented was challenged through an established judicial, quasi-judicial, or administrative procedure and found to be inaccurately described; when the document is not identical to the individual's copy; or when the document is not created in accordance with the applicable recordkeeping requirements. (For example, the amendment provisions are not designed to allow a challenge to the merits of an agency adverse action that is documented in an individual's Official Personnel Folder.)

§ 297.304 Approval of requests to amend records.

(a) If the system manager determines that amendment of a record is appropriate, the system manager will take the necessary steps to have the necessary changes made and will see that the individual receives a copy of the amended record.

(b) When practicable and appropriate, the system manager will advise all prior recipients of the fact that an amendment of a record has been made.

§ 297.305 Denial of requests to amend records.

(a) If the Office or agency system manager decides not to amend the record in the manner sought, the requester should be notified in writing of the reasons for the denial.

(b) The decision letter should also include the requester's right to appeal the denial and the procedures for appealing the denial to the appropriate official.

§ 297.306 Appeal of a denial of a request to amend a record.

(a) An individual who disagrees with an initial denial to amend a record may file a written appeal of that denial to the appropriate official. In submitting an appeal, the individual should provide a copy of the original request for amendment, a copy of the initial denial decision, and a statement of the specific reasons why the initial denial is believed to be in error. Any appeal should be submitted to the official designated in the initial decision letter. The appeal should include the words "PRIVACY ACT APPEAL" in capital letters on the envelope and at the top of the letter of appeal.

(b) The reviewing official should complete the review and make a final determination in writing no later than 30 working days from the date on which the appeal is received. When circumstances warrant, this timeframe may be extended.

(c) If the Office grants the appeal, it will take the necessary steps either to amend the record itself or to require the originating agency to amend the record. When appropriate and possible, prior recipients of the record should be notified of the Office's action.

(d) The Office reserves the right to hold in abeyance any Privacy Act appeal concerning a record when an individual is involved in challenging an action involving that record in another administrative, judicial, or quasi-judicial forum. At the conclusion of such a challenge, the individual can resubmit the appeal.

(e) If the Office denies the appeal, it will include in the decision letter notification of the appellant's right to judicial review.

§ 297.307 Statement of disagreement.

(a) Upon receipt of a final administrative determination denying a request to amend a record, the requester may file a concise statement of disagreement. Such a statement should be filed with the appropriate system manager and should include the reasons why the requester believes the decision to be incorrect.

(b) The statement of disagreement should be maintained with the record to be amended and any disclosure of the record must include a copy of the statement of disagreement.

(c) When practicable and appropriate, the system manager should provide a copy of the statement of disagreement to any individual or agency to whom the record was previously disclosed as noted by the disclosure accounting.

§ 297.308 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart D—Disclosure of Records

§ 297.401 Conditions of disclosure.

An official or employee of the Office or agency should not disclose a record retrieved from a Governmentwide system of records to any person, another agency, or other entity without the express written consent of the subject individual unless disclosure is—

(a) To officers or employees of the Office who have a need for the information in the performance of their duties.

(b) Required by the provisions of the Freedom of Information Act.

(c) For a routine use as published in the FEDERAL REGISTER.

(d) To the Bureau of the Census for uses pursuant to Title 13 of the United States Code.

(e)(1) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record will be transferred in a form that is not individually identifiable. The written statement should include as a minimum:

(i) A statement of the purpose for requesting the records; and

(ii) Certification that the records will be used only for statistical purposes.

(2) These written statements should be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will reasonably ensure that the identity of the individual cannot be deduced by combining various statistical records.

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or his or her designee to determine whether the record has such value.

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Office or agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(h) To a person showing compelling circumstances affecting the health and safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification should be sent to the last known address of the subject individual.

(i) To the Congress or to a Congressional committee, subcommittee, or joint committee to the extent that the subject matter falls within its established jurisdiction.

(j) To the Comptroller General or any authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to the order of a court of competent jurisdiction.

(l) To a consumer reporting agency in accordance with section 3711 (f) of Title 31 of the United States Code.

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

(a) The Office may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order signed by the appropriate official of a court of competent jurisdiction or quasi-judicial agency. In this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order will be provided to the data subject by the Office as soon as practicable after service of the order. The notice should be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart should consult legal counsel to ensure that the response is appropriate.

§ 297.403 Disclosure pursuant to a subpoena served on the Office.

(a) The Office may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to a subpoena signed by the appropriate official and issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, should consult, as appropriate, with legal counsel to ensure that—

(1) The requested materials are relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of the time allowed for response, if necessary.

(c) If a subpoena for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records.

(d) If oral testimony is requested by the subpoena, an explanation, which sets forth the testimony desired, must be furnished to the Office system manager. The individual who has been subpoenaed to testify should consult with legal counsel to determine the matters about which the individual may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the subpoena, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee should not provide the information without prior approval of the appropriate Office official.

(f) If it is determined that the information should not be provided, the individual subpoenaed should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(g) When the records for an individual residing in an Office system of records are subpoenaed, the disclosing Office official should notify the individual whose records are sought of the subpoena's issuance. Notice should be mailed to the last known address of the individual and contain the following information: the date the subpoena is returnable; the name and number of the case or proceeding; and the nature of the record sought. Such notice should be accomplished within 10 working days after receipt of the subpoena or as soon as practicable. Notice of the issuance of an ex parte order or subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the FEDERAL REGISTER.

§ 297.404 Accounting of disclosure.

(a) The Office or agency will maintain a record of disclosures in cases where records about the individual are disclosed from an Office system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of the Office or agency who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for at least 5 years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the purpose, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the Office's exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart E—Exempt Records

§ 297.501 Exemptions.

(a) Several of the Office's internal, central, and Governmentwide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6) may be claimed. The systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) *Specific exemptions*— (1) *Inspector General Investigations Case File Records (OPM/CENTRAL-4).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Inspector General investigations may contain properly classified information that pertains to national defense and foreign policy obtained from other systems or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Inspector General investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records under 5 U.S.C. 552(a)(3) and (d).

(iii) Inspector General investigations may contain information obtained from another system or Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Inspector General case files may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). This exemption is claimed because this system contains investigatory material that if disclosed may reveal the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence or, prior to September 27, 1975, under an implied promise. The application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d) relating to access to and amendment of records by the data subject. This exemption is claimed because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Inspector General case files may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(2) *Administrative Law Judge Applicant Records* (*OPM/CENTRAL-6*). (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirement of 5 U.S.C. 552(c)(3) and (d). The exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentialty should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing and examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examing process.

(3) *Litigation and Claims Records* (*OPM/CENTRAL-7*). (i) When litigation or claim cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file, the appropriate exemption (5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), or (7)) shall also apply to the material as it appears in this system. The exemptions will be only from those provisions of the Act that were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7). Such material is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are:

(A) Such investigations may contain properly classified information that pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of suh classified information under 5 U.S.C 552a(d).

(B) Such investigations may contain investigatory material compiled for law enforcement purposes othe than material within the scope of 5 U.S.C. 552a(j)(2), e.g., administration of the merit system, obtained from another Federal agency. All information about individuals in these records that meets the criteria of 5 U.S.C 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records.

(C) Such investigations may contain information obtained from another agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records.

(D) Such investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(E) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source.

(F) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examining process.

(G) Such investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Privacy Act/Freedom of Information Case Records (OPM/CENTRAL-8).* In this subpart, the Office has claimed exemptions for its other systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6) and (7). During the processing of a Privacy Act/Freedom of Information Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(5) *Personnel Investigations Records (OPM/CENTRAL-9).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the

data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may contain properly classified information which pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amended of such records under 5 U.S.C. 552a (c)(3) and (d).

(iii) Personnel investigations may contain information obtained from another Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Personnel investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Personnel Investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(6) *Presidential Management Intern Program Records (OPM/CENTRAL-11).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(7) *Recruiting, Examining, and Placement Records (OPM/GOVT-5).* (i) All information about individuals in

these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(K)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(8) *Personnel Research Test Validation Records (OPM/GOVT-6).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(c) The Office also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. The Office may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

PART 300—EMPLOYMENT (GENERAL)

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AUTHORITY: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966-1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 3324.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Subpart A—Employment Practices

§ 300.101 Purpose.

The purpose of this subpart is to establish principles to govern, as nearly as is administratively feasible and practical, the employment practices of the Federal Government generally, and of individual agencies, that affect the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service or in positions in the government of the District of Columbia required to be filled in the same manner that positions in the competitive service are filled. For the purpose of this subpart, the term "employment practices" includes the development and use of examinations, qualification standards, tests, and other measurement instruments.

[36 FR 15447, Aug. 14, 1971]

§ 300.102 Policy.

This subpart is directed to implementation of the policy that competitive employment practices:

(a) Be practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of candidates for the jobs to be filled;

(b) Result in selection from among the best qualified candidates;

(c) Be developed and used without discrimination because of race, color, religion, sex, age, national origin, partisan political affiliation or other nonmerit grounds; and

(d) Insure to the candidate opportunity for appeal or administrative review, as appropriate.

[40 FR 15379, Apr. 7, 1975]

§ 300.103 Basic requirements.

(a) *Job analysis.* Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:

(1) The basic duties and responsibilities;

(2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and

(3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) *Relevance.* (1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under section 3308 of title 5, United States Code.

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) *Equal employment opportunity.* An employment practice shall not discriminate on the basis of race, color, religion, sex, age, national origin, partisan political affiliation, or other nonmerit factor. Employee selection procedures shall meet the standards established by the "Uniform Guidelines on Employee Selection Procedures" (1978), 43 FR 38290 (August 25, 1978).

[40 FR 15380, Apr. 7, 1975, as amended at 43 FR 38310, Aug. 25, 1978]

§ 300.104 Appeals, grievances and complaints.

(a) *Employment practices.* A candidate who believes that an employment practice which was applied to him or her by the Office of Personnel Management violates a basic requirement in § 300.103 is entitled to appeal to the Merit Systems Protection Board under the provisions of its regulations.

(b) *Examination ratings.* A candidate may file an appeal with the Office from his examination rating or the rejection of his application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal shall be filed and processed in accordance with instructions in Chapter 337 of the Federal Personnel Manual.

(c) *Complaints and grievances to an agency.* (1) A candidate may file a complaint with an agency when he believes that an employment practice which was applied to him and which is administered or required by the agency discriminates against him on the basis of race, color, religion, sex, or national origin; or age, provided that at the time of the alleged discriminatory action the candidate was at least 40 years of age but less than 65 years of age. The complaint shall be filed and processed in accordance with Subparts B and E of Part 713 of this chapter.

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under the agency grievance system established in accordance with Part 771 of this chapter, or a negotiated grievance system.

[40 FR 15380, Apr. 7, 1975, as amended at 41 FR 51579, Nov. 23, 1976; 44 FR 48951, Aug. 21, 1979]

Subpart B—Examinations and Related Subjects

§ 300.201 Examinations.

(a) The Office makes available information that will assist members of the public in understanding the purpose of, and preparing for, civil service examinations. This includes the types of questions and the categories of knowledge or skill pertinent to a particular examination. The Office does not release the following: (1) Testing and examination materials used solely to determine individual qualifications, and (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to conduct an examination authorized by the Office.

(c) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(d) The Office will release information concerning the results of examinations only to the individual concerned, or to parties explicitly designated by the individual.

(e) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

[50 FR 3312, Jan. 24, 1985]

Subpart C—OPM Approval in Filling Positions in GS-16 and Above

§ 300.301 OPM approval in filling positions in GS-16 and above.

An agency, unless excepted from this requirement by law, may fill a competitive or excepted position classified in GS-16, GS-17, or GS-18, only by a person whose qualifications for the position have been approved by OPM.

[33 FR 12412, Sept. 4, 1968]

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

SOURCE: 53 FR 51222, Dec. 21, 1988, unless otherwise noted.

§ 300.401 Definitions.

For purposes of this subpart:

(a) A "commercial recruiting firm" is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

(b) A "nonprofit employment service" is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local government. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

§ 300.402 Coverage.

These regulations apply to filling positions in the competitive service; positions in the excepted service under Schedules A, B, and C, or filled by noncareer executive assignment; and positions in the Senior Executive Service.

§ 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;

(b) The agency has provided vacancy notices to appropriate State Employment Service and OPM offices; and

(c) The agency continues its own recruiting efforts.

§ 300.404 Use of fee-charging firms.

(a) Federal agencies are prohibited from using commercial recruiting firms and nonprofit employment services which charge fees to individuals referred to Federal positions. Federal agencies may not consider a candidate referred by a commercial recruiting firm or nonprofit employment service if the individual has paid or is expected to pay any fee to the firm or service.

(b) The prohibition in paragraph (a) of this section does not apply to registration fees paid by individuals to nonprofit employment services operated by professional organizations when the registration fee is imposed regardless of whether the registrant is referred for employment or placed.

§ 300.405 Requirement for contract.

(a) A written contract awarded in accordance with procedures stipulated in the Federal Acquisition Regulations is required between the Federal agency and a commercial recruiting firm or nonprofit employment service. The contract will satisfy the "written request" required by 18 U.S.C. 211. That statute prohibits the acceptance of payment for aiding an individual to obtain Federal employment *except* when an employment agency renders services pursuant to the written request of an executive department or agency.

(b) The contract must include the qualifications requirements for the position(s) to be filled and also provide that the firm or service will:

(1) Screen candidates only against the basic qualifications requirements for the position(s) specified by the Federal agency in the contract and refer to the agency all candidates who appear to meet those requirements;

(2) Refer to the Federal agency only those applicants from whom the firm or service has not accepted fees other than those permitted under § 300.404(b) of this part;

(3) Not imply that it is the sole or primary avenue for employment with the Federal Government or a specific Federal agency; and

(4) Recruit and refer candidates in accordance with applicable merit principles and equal opportunity laws.

§ 300.406 Agency responsibilities.

(a) The purpose of a commercial recruiting firm or nonprofit employment service is to serve as an additional source of applicants. Once recruited, applicants must be evaluated and appointed through regular civil service employment procedures.

(1) For a competitive service position, an individual must be appointed in accordance with the terms of applicable competitive service procedures.

(2) For an excepted service position, an individual must be appointed in accordance with the terms of the applicable appointing authority and the requirements set out in Part 302 of this chapter.

(3) For a Senior Executive Service position filled by career appointment, an individual must be appointed in accordance with the competitive process described in 5 U.S.C. 3393.

(b) In order to use commercial recruiting firms or nonprofit employment services, agencies are required to:

(1) Make known that applicants may apply directly to the Government and thus need not apply through the commercial recruiting firm or nonprofit employment service;

(2) Give the same consideration to candidates who have applied directly and candidates referred from the commercial recruiting firm or nonprofit employment service; and

(3) Follow all requirements for appointment, including veterans preference, where applicable.

§ 300.407 Documentation.

(a) Agencies are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not resulted in the violation of merit system principles or the commission of any prohibited personnel practice.

(b) In order for OPM to evaluate the authority granted under this subpart, agencies must submit reports in accordance with its instructions. Reports will be required on at least an annual basis and, as a minimum, will provide information on the kinds of jobs for which recruiting firms were used, the costs to the agency, and the results in terms of candidates referred and selected. Reports will also provide comparative data to show the effect of using a recruiting firm on the agency's ability to locate well-qualified candidates. Specific reporting instructions will be provided through the Federal Personnel Manual.

§ 300.408 Corrective action.

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

Subpart E—Use of Private Sector Temporaries

SOURCE: 54 FR 3766, Jan. 25, 1989, unless otherwise noted.

§ 300.501 Definitions.

For purposes of this subpart:

(a) A "temporary help service firm" is a private sector entity which quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, pro-

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vides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) "Private sector temporaries" or "outside temporaries" are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns o various client organizations who have contracted for the temporary use of their skills when required.

(c) "Parental and family responsibilities" are defined in chapter 630 of the Federal Personnel Manual and include situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

(d) A "Federal supervisor" of Federal employees is defined in 5 U.S.C. 7103(a)(10) as

> an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment * * *

(e) A "critical need" is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive order, court order, regulation, or formal directive from the head of an agency or subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

(f) A "local commuting area" is defined in Part 351 of this chapter.

§ 300.502 Coverage.

These regulations apply to the competitive service and to Schedules A and B in the excepted service. These regulations shall not be used:

(a) For the Senior Executive Service, or

(b) For the work of managerial or supervisory positions.

§ 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract or other procurement arrangement with a temporary help service firm for the brief or intermittent use of the skills of private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists—

(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or

(2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. At minimum, this should include an agency determination that there are no qualified candidates on the applicant supply file and on the reemployment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference in chapter 316 of the Federal Personnel Manual to determine whether qualified candidates are available by

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the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service, or

(2) To displace a Federal employee.

§ 300.504 Prohibition on employer-employee relationship

No employer-employee relationship is created by an agency's use of private sector temporaries under these regulations. Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose, shall not be regarded as performing a personal service, and shall not be eligible for civil service employee benefits, including retirement. Further, to avoid creating any appearance of such a relationship, agencies shall observe the following requirements:

(a) No one employee of a temporary help firm may work at an agency within its local commuting area for more than 45 work-days in a 6-month period. For departments, the 45 day limit applies to the bureau, service, or other major organizational element at the headquarters level of the department. Provided a situation in § 300.503(a) of this subpart continues to exist, an agency may secure a different individual from the firm or, provided it can show that termination would cause significant delay, an agency may request OPM to authorize the extension of the same individual for a specified period. An agency may authorize the extension of the same individual for one period not exceeding 20 workdays when needed for maternity absence.

(b) An agency's use of private sector temporaries shall not exceed an overall duration of 120 calendar days in any one individual situation under § 300.503(a) of this subpart. OPM may extend that time limit, for a period not to exceed 120 calendar days, in the interest of good administration in circumstances it determines to be appropriate.

(c) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

(d) Agencies shall train their employees in appropriate procedures for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of § 300.501 of this subpart are carried out by the temporary help service firm. At the same time, agencies must give technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to decide to meet their temporary needs by a number of means including appointing individuals as civil service employees, details, redistribution of work, overtime, in-house pools, and the on-call authority.

§ 300.506 Requirements of procurement.

(a) Agencies must follow the Federal procurement laws and the Federal Acquisition Regulation, as applicable, in procuring services from the private sector.

(b) Agencies should make full use of the provisions of the Federal procurement system to make clear that the firm is the legally responsible employer and to specify the obligations the firm will have to meet to provide effective performance including such matters as the types and levels of skills to be provided, deadlines for providing service, liability insurance, and, when necessary, security requirements. The Federal procurement system also requires contractors to comply with affirmative action requirements to employ and advance in employment qualified disabled and Vietnam era veterans as provided in 41 CFR Part 60-250, and with public policy programs including equal employment opportunity, handicapped employment, and small businesses.

§ 300.507 Documentation.

Agencies are required to maintain basic records to establish that use of temporary help services is consistent with these regulations. Specific instructions will be provided through the Federal Personnel Manual System.

Subpart F—Time-In-Grade Restrictions

§ 300.601 Applicability.

(a) This subpart applies to any advancement from a competitive or excepted position that is subject to the General Schedule to a competitive position that is subject to the General Schedule by:

(1) Promotion;

(2) Transfer to a higher grade; or

(3) Any type of appointment under this chapter (including reemployment and reinstatement) made within 1 year after separation from a nontemporary appointment.

(b) This subpart does not apply:

(1) When the position from which the advancement is made is outside the competitive service and in the legislative or judicial branch; or

(2) When the position from which the advancement is made is not subject to the General Schedule unless the employee advanced held a position of this type within the preceding year.

[37 FR 11965, June 16, 1972]

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS-12 and above.* An agency may advance an employee to a position at GS-12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS-6 through GS-11.* An agency may advance an employee to a position at GS-6 through GS-11 only after he or she has served a minimum of —

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS-5 or below.* An agency may advance an employee to a position at GS-5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

[51 FR 8411, Mar. 11, 1986]

§ 300.603 Exceptions to restrictions.

(a) Section 300.602 of this part does not prevent the advancement of an employee when:

(1) The advancement is made under the provisions of a training agreement established in accordance with instructions in chapter 338 of the Federal Personnel Manual. However, an agency may not make promotions of more than two grades in 1 year solely on the basis of a training agreement or a series of training agreements, and may not approve training agreements that provide for consecutive promotions of any employee at rates exceeding those prescribed in section 300.602 of this part. Training agreements that provide for consecutive accelerated promotions must be approved by OPM.

(2) The advancement is to any grade or level up to that from which the employee has ever been demoted or separated by any agency because of a reduction in force.

(3) The employee is within reach on a register for competitive appointment to the position to be filled.

(b) Section 300.602 (a) and (b) does not prevent the advancement of an employee who has 1 year of service in a position two grades lower than the position to be filled if there is no position in the normal line of promotion that is one grade lower than the position to be filled.

(c) Section 300.602(c) does not prevent the advancement of an employee to a position at GS-5 or below which he or she held previously or to which he or she could have been advanced previously under that paragraph.

(d) Section 300.602 (a) and (b) of this part does not prevent the advancement of an employee to a position no more than three grades above the employee's current grade when:

(1) The employee meets all other qualification requirements for the position; and

(2) The agency head or his or her designee determines that waiver of the time in grade requirements is needed to avoid undue hardship to the agency or inequity to the employee resulting from an unavoidable situation that cannot be corrected through valid actions other than promotion of the particular employee. Each promotion authorized under this paragraph must be approved individually by the agency head or his or her designee.

(e) Section 300.602 (a) and (b) does not prevent the advancement of an employee in a situation not covered by paragraphs (a) through (d) of this section when OPM authorizes the advancement to avoid undue hardship or inequity, in an individual case of a meritorious nature.

[44 FR 55132, Sept. 25, 1979, as amended at 53 FR 34274, Sept. 6, 1988]

§ 300.604 Periods of creditable service.

(a) Except as provided in § 330.502 of this chapter, the periods of service required by §§ 300.602 (a) and (b) and 300.603(b) include all service at the appropriate or higher grade or level in positions in the Federal or District of Columbia civilian service regardless of whether or not the positions were subject to the General Schedule.

(b) Except as provided in § 330.502 of this chapter, when two periods of service in positions subject to the General Schedule are interrupted for less than 1 year by service in a position not subject to the General Schedule, the latter service is counted as a continuation of the prior service in the position subject to the General Schedule.

(c) Except as provided in paragraph (b) of this section, and in § 330.502 of this chapter, service in a position not subject to the General Schedule is counted at the equivalent General Schedule grade in effect when the service was performed. The equivalent General Schedule grade is determined by comparing the representative rate of the position, as defined in Part 351 of this chapter, with the representative rates of positions under the General Schedule. The highest General Schedule grade whose representative rate does not exceed the representative rate of the position by more than one within-grade increase is the equivalent General Schedule grade.

[34 FR 2649, Feb. 27, 1969]

§ 300.605 Other time restrictions.

The time-in-grade restrictions in this subpart are in addition to the time-after-competitive-appointment restrictions contained in Subpart E of Part 330 of this chapter.

[34 FR 2649, Feb. 27, 1969]

Subpart G—Statutory Bar to Appointment of Persons Who Fail to Register Under Selective Service Law

SOURCE: 52 FR 7400, Mar. 11, 1987, unless otherwise noted.

§ 300.701 Statutory requirement.

Section 3328 of title 5 of the United States Code provides that—

(a) An individual—

(1) Who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) Who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an executive agency of the Federal Government.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

§ 300.702 Coverage.

Appointments in the competitive service, the excepted service, the Senior Executive Service, or any other civil service personnel management system in an executive agency are covered by these regulations.

§ 300.703 Definitions.

In this subpart—

"Appointment" means any personnel action that brings onto the rolls of an executive agency as a civil service officer or employee as defined in 5 U.S.C. 2104 or 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. Personnel actions that move an employee within an agency without a break in service are not covered. A break in service is a period of 4 or more calendar days during which an individual is no longer on the rolls of an executive agency.

"Covered individual" means a male (a) whose application for appointment is under consideration by an executive agency or who is an employee of an executive agency; (b) who was born after December 31, 1959, and is at least 18 years of age or becomes 18 following appointment; (c) who is either a United States citizen or an alien (including parolees and refugees and those who are lawfully admitted to the United States for permanent residence and for asylum) residing in the United States; and (d) is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453). Nonimmigrant aliens admitted under section 101(a)(15) of the Immigration and Nationality Act (8 U.S C. 1101), such as those admitted on visitor or student visas, and lawfully remaining in the United States, are exempt from registration.

"Executive agency" means an agency of the Government of the United States as defined in 5 U.S.C. 105.

"Exemptions" means those individuals determined by the Selective Service System to be excluded from the requirement to register under sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or Presidential proclamation.

"Preponderance of the evidence" means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

"Registrant" means an individual registered under Selective Service law.

"Selective Service law" means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under that Act.

"Selective Service System" means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§ 300.704 Considering individuals for appointment.

(a) An executive agency must request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process prior to appointment, and from each covered employee who becomes 18 after appointment. The individual must complete, sign, and date in ink the statement on a form provided by the agency unless the applicant furnishes other documentation as provided by paragraph (c) of this section.

(b) *Statement of Selective Service registration status.* Agencies should reproduce the following statement, which has been approved by the Office of Management and Budget for use through October 31, 1989, under OMB Control No. 3206-0166:

APPLICANT'S STATEMENT OF SELECTIVE SERVICE REGISTRATION STATUS

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must be registered with the Selective Service System, unless you meet certain exemptions under Selective Service law. If you are required to register but knowingly and willfully fail to do so, you are ineligible for appointment by executive agencies of the Federal Government.

CERTIFICATION OF REGISTRATION STATUS

Check one:

[ ] I certify I am registered with the Selective Service System.

[ ] I certify I have been determined by the Selective Service System to be exempt from the registration provisions of Selective Service law.

[ ] I certify I have not registered with the Selective Service System.

[ ] I certify I have not reached my 18th birthday and understand I am required by law to register at that time.

NON-REGISTRANTS UNDER AGE 26

If you are under age 26 and have not registered as required, you should register promptly at a United States Post Office, or consular office if you are outside the United States.

NON-REGISTRANTS AGE 26 OR OVER

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove to the Office of Personnel Management (OPM) that your failure to register was neither knowing nor willful. You may request an OPM decision through the agency that was considering you for employment by returning this statement with your written request for an OPM determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

PRIVACY ACT STATEMENT

Because information on your registration status is essential for determining whether you are in compliance with 5 U.S.C. 3328, failure to provide the information requested by this statement will prevent any further consideration of your application for appointment. This information is subject to verification with the Selective Service System and may be furnished to other Federal agencies for law enforcement or other authorized use in implementing this law.

FALSE STATEMENT NOTIFICATION

A false statement may be grounds for not hiring you, or for firing you if you have already begun work. Also, you may be punished by fine or imprisonment. (Section 1001 of title 18, United States Code.)

____

Legal signature of individual (please use ink)

____

Date signed (please use ink)

(c) At his option, a covered individual may submit, in lieu of the statement described above, a copy of his Acknowledgment Letter or other proof of registration or exemption issued by the Selective Service System. The individual must sign and date the document and add a note stating it is submitted as proof of Selective Service registration or exemption.

(d) An executive agency will give no further consideration for appointment to individuals who fail to provide the information requested above on registration status.

(e) An agency considering employment of a covered individual who is a current or former Federal employee is not required to request a statement when it determines that the individual's Official Personnel Folder contains evidence indicating the individual is registered or currently exempt from registration.

§ 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify, at its discretion, an individual's registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System, toll-free telephone number 800-621-5383.

(b) An agency may continue regular pre-employment consideration of individuals whose statements show they have registered or are exempt.

(c) An agency will take the following actions when a covered individual who is required to register has not done so, and is under age 26:

(1) Advise him to register promptly and, if he wishes further consideration, to submit a new statement immediately to the agency once he has registered. The agency will set a time limit for submitting the statement.

(2) Provide written notice to an individual who still does not register after being informed of the above requirements that he is ineligible for appointment according to 5 U.S.C. 3328 and will be given no further employment consideration.

(d) An agency will take the following actions when a covered individual who is age 26 or over, was required to register, and has not done so:

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful, and that OPM will decide whether his failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his registration status for determination to—Registration Review, Staffing Operations Division, Career Entry Group, Room 6A12, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(3) An agency is not required to keep a vacancy open for an individual who seeks an OPM determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless OPM finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in § 332.406 concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a copy of its written notice to the individual.

§ 300.706 Office of Personnel Management adjudication.

(a) OPM will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in § 300.705. The Associate Director for Career Entry or his or her designee will make the determination based on the written explanation provided by the individual. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) OPM may consult with the Selective Service System in making determinations.

(c) The Associate Director for Career Entry or his or her designee will notify the individual and the agency in writing of the determination. The determination is final unless reconsidered at the discretion of the Associate Director. There is no further right to administrative review.

(d) The Director of OPM may reopen and reconsider a determination.

(e) The Director of OPM may, at his or her discretion, delegate to an executive agency the authority to make initial determinations. However, OPM may review any initial determination and make a final adjudication in any case. If a delegation is made under this paragraph, the notice in § 300.705(d)(1) will state that the individual may submit a written request that OPM review the agency's initial determination. The agency will forward to OPM copies of all documents relating to the individual's failure to register, including the individual's request for review and his explanation of his failure to register.

§ 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, OPM determines in response to his explanation that his failure to register was neither knowing nor willful.

PART 301—OVERSEAS EMPLOYMENT

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

Sec.
301.201 Appointment of United States citizens recruited overseas.
301.202 Appointment of citizens recruited outside overseas areas.
301.203 Duration of appointment.
301.204 Status and trial period.
301.205 Requirements and restrictions.
301.206 Within-grade increases.

Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

301.301 Eligibility under the authority of Executive Order 12362.
301.302 Overseas appointing procedures.
301.303 Performance appraisal.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954-1958 Comp., p. 274, unless otherwise noted.

SOURCE: 44 FR 54691, Sept. 21, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

§ 301.201 Appointment of United States citizens recruited overseas.

An agency may give an overseas limited appointment without competitive examination to a United States citizen recruited overseas, unless there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists.

§ 301.202 Appointment of citizens recruited outside overseas areas.

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to a United States citizen recruited in an area where an overseas limited appointment is not authorized.

§ 301.203 Duration of appointment.

(a) An appointment under this subpart is of indefinite duration unless otherwise limited.

(b) An agency may make an overseas limited term appointment for a period not in excess of 5 years when a time limitation is imposed as a part of a general program for rotating career and career-conditional employees between overseas areas and the United States after specified periods of overseas service.

(c) Under conditions published by the Office of Personnel Management in the Federal Personnel Manual, an agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend an appointment made for a period of 1 year or less under this paragraph under conditions published by the Office of Personnel Management in the Federal Personnel Manual.

§ 301.204 Status and trial period.

(a) An overseas limited employee does not acquire a competitive status on the basis of his or her overseas limited appointment. He or she is required to serve a trial period of 1 year when given an overseas limited appointment of indefinite duration or an overseas limited term appointment.

(b) The agency may terminate an overseas limited employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 301.205 Requirements and restrictions.

The requirements and restrictions in Subpart F of Part 300 and Part 333 of this chapter apply to appointments under this subpart.

§ 301.206 Within-grade increases.

An employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment in a position subject to the General Schedule, is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

(5 U.S.C. 3301, 3302, E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954-1958 Comp., p. 274)

Subpart C—Overseas Employees Eligible for Noncompetitive Appointment Upon Return to the United States

AUTHORITY: E.O. 12362, 47 FR 21231, 3 CFR, 1982 Comp., p. 182.

SOURCE: 48 FR 52868, Nov. 23, 1983; correctly designated at 49 FR 5601, Feb. 14, 1984, unless otherwise noted.

§ 301.301 Eligibility under the authority of Executive Order 12362.

Employees who serve under overseas local hire appointments as defined in § 315.608(b) of this chapter and meet the eligibility criteria of § 315.608(a) of this chapter are eligible for noncompetitive career-conditional, term, or temporary limited appointment when they return to the United States.

§ 301.302 Overseas appointing procedures.

Overseas agencies are required to insure that selection of employees for local hire appointments in the overseas area is made on the basis of the ability, knowledge, and skills of eligible candidates, in accordance with applicable law and regulation.

§ 301.303 Performance appraisal.

As soon as practicable, but beginning not later than January 1, 1984, overseas agencies are required to evaluate the performance of employees who serve under overseas local hire appointments as defined in § 315.608(b) of this chapter and who are eligible to meet the criteria established in § 315.608(a), of this chapter in accordance with the agency's performance appraisal plan established under Chapter 43 of title 5, U.S. Code, unless the agency is exempt from the provisions of that chapter.

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

Subpart A—General Provisions

Sec.
302.101 Positions covered by regulations.
302.102 Method of filling positions and status of incumbents.
302.103 Definitions.
302.104 Applicability of regulations to applicants and employees.

Sec.
302.105 Special agency plans.

Subpart B—Eligibility Standards

302.201 Persons entitled to veteran preference.
302.202 Qualification requirements.
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Subpart C—Accepting, Rating and Arranging Applications

302.301 Receipt of applications.
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302.304 Order of consideration.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

302.401 Selection and appointment.
302.402 Reappointment.
302.403 Qualifications for promotion.

Subpart E—Appeals

302.501 Entitlement.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.

SOURCE: 55 FR 9407, Mar. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of $1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) and similar types of positions when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Positions filled by noncareer executive assignment (see subpart F of part 305 of this chapter);

(10) Attorney positions; and

(11) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; *Provided That*, there are no candidates eligible for the position on the agency's priority reemployment list established in accordance with § 302.303.

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment. When an employee serving under a nontemporary appointment in the competitive service is selected for an excepted appointment or for noncareer executive assignment, the agency must—

(1) Inform the employee that, because the position is in the excepted service, it may not be filled by a competitive appointment, and that acceptance of the proposed appointment will take him/her out of the competitive service while he/she occupies the position; and

(2) Obtain from the employee a written statement that he/she understands he/she is leaving the competitive service voluntarily to accept an appointment in the excepted service.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.

§ 302.103 Definitions.

Person entitled to priority consideration means a person who was furloughed or separated without misconduct, from a position without time limit, because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began. To be eligible under this part the person must apply for reappointment to his or her former agency within 30 days of the date of cessation of compensation.

§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions when no preference eligible or person entitled to priority consideration applies.

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive under the procedures set forth in this part.

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in the evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as "CP" for preference eligibles under 5 U.S.C. 2108(3)(C), as "XP" for preference eligibles under 5 U.S.C. 2108(3) (D) through (G), and as "TP" for all other preference eligibles under that title.

§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, minimum age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his/her request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education. An agency shall not establish a maximum age requirement for any position. Each agency shall make a part of its records the reasons for its decision under this section and shall furnish those reasons to an applicant on his/

her request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

§ 302.203 Disqualifying factors.

(a) The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(1) Dismissal from employment for delinquency or misconduct;

(2) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Habitual use of intoxicating beverages to excess;

(5) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(6) Any legal or other disqualification which makes the individual unfit for service; or

(7) Lack of United States citizenship.

(b) An agency may not disqualify an applicant solely because of his/her retired status.

Subpart C—Accepting, Rating, and Arranging Applications

§ 302.301 Receipt of applications.

(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.

(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his/her request.

§ 302.302 Examination of applicants.

(a) *Eligibility.* An evaluation of the qualifications of applicants for positions covered by this part may be conducted at any time before an appointment is made. The evaluation may involve only determination of eligibility or ineligibility or may include qualitative rating of candidates. If the evaluation involves only basic eligibility numerical scores will not be assigned and eligible candidates will be referred in accordance with the procedures described in paragraph (b)(5) of § 302.304. If qualitative ranking is desired, numerical scores may be assigned in accordance with paragraph (b) of this section. Each agency shall make a part of the records the reasons for its decision to use ranked or unranked referral and, for ranked actions, the quality ranking factors used. This information shall be made available to an applicant on his/her request.

(b) *Rating.* Numerical scores will be assigned on a scale of 100. Each applicant who meets the qualification requirements for the position established under § 302.202 will be assigned a rating of 70 or more and will be eligible for appointment. Candidates scoring 70 or more will receive additional points for veteran preference as provided in § 302.201. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants, numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time. The agency must, however, adopt procedures to insure the consideration of preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. An agency shall furnish a notice of the rating assigned to an applicant on his/her request.

(c) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(d) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) *Establishment*—(1) *Agency's obligation.* An agency must establish a priority reemployment list whenever any applicants rated eligible under § 302.302 meet the conditions set out in paragraphs (b)(1) through (b)(3) of this section and must consider candidates from that list in accordance with § 302.304(a). All applicants not included on the priority reemployment list will be listed on the regular employment list unless the agency elects to establish a reemployment list as provided in paragraph (c) of this section.

(2) *Agency discretion.* In establishing its lists, an agency may, but is not required to: Afford priority consideration to non-preference eligibles who meet the conditions set out in paragraph (b)(4) of this section; afford priority consideration under paragraph (b) of this section for a longer time and/or in a broader geographic area than the minimum requirement; and/or provide reemployment consideration after the priority list is exhausted to additional current and former employees in accordance with paragraph (c) of this section. An agency may limit consideration granted at its discretion to applicants for specific positions or applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(b) *Priority reemployment list.* Candidates are entered on the priority reemployment list in the geographic areas specified in paragraph (b)(1) of this section and remain on the list for 2 years unless the agency elects to provide a longer period of eligibility. The priority reemployment list includes:

(1) The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered for positions in the commuting area where they were separated unless the agency elects to provide broader consideration.

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency, but who is not entitled to immediate restoration under the Board's decision. Candidates in this category are considered in the commuting area from which separated unless the Board's decision specifies a broader or different area or the agency elects to afford broader geographic consideration.

(3) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part. Candidates in this category are considered in the commuting area where they last served and, if the agency determines that an appropriate vacancy is unlikely to occur in that

area during the candidates' period of reemployment priority, in other locations for which they are available.

(4) At the agency's discretion, the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the geographic area specified by the agency.

(c) *Reemployment list.* A reemployment list may be established at the agency's discretion to include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(d) *Order of entry.* An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

(1) *When candidates have been rated only for basic eligibility under § 302.302(a).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as "CP") unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other candidates eligible for 10-point veteran preference;

(iii) All candidates eligible for 5-point veteran preference; and

(iv) Qualified candidates not eligible for veteran preference.

(2) *When qualified candidates have been assigned numerical scores under § 302.302(b).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more, in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

§ 302.304 Order of consideration.

(a) *Consideration of priority reemployment candidates.* An agency must consider all qualified candidates on its priority reemployment list before it may refer candidates from its reemployment list, if any, or regular employment list. When a qualified candidate is available on the priority list, the agency may appoint an individual who is not on the priority list or who has lower standing than others on that list *only* when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is entitled to reemployment priority or has higher standing on the priority reemployment list than the one appointed. The agency must notify each individual on the priority reemployment list who is adversely affected by an appointment under this paragraph of the reasons for the exception and must further notify each such individual who is a preference eligible of his or her right of appeal to the Merit Systems Protection Board.

(b) *Consideration of other candidates.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, an agency shall consider applicants on the reemployment and/or regular employment list who have been assigned eligible ratings for a given position in Order A, Order B, or Order C, as described in paragraphs (b)(1) through (b)(3) of this section. Order A must be used when the agency has not established a reemployment list.

(1) *Order A.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant in the order of his/her numerical ranking.

(2) *Order B.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(3) *Order C.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(4) *Professional order.* An agency shall consider applicants who have been assigned eligible ratings for professional and scientific positions at the GS-9 level and above, or equivalent, in the following order:

(i) *Applicants on the agency's reemployment list, if any.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other priority reemployment candidates.

(ii) *Applicants on the agency's regular employment list.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other candidates.

(5) *Unranked order.* When numerical scores are not assigned, the agency may consider applicants who have received eligible ratings for positions not covered by paragraph (b)(4) of this section in either of the following orders:

(i) *By preference status.* Under this method, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles. Within each category, applicants from the reemployment list will be placed ahead of applicants from the regular employment list.

(ii) *By reemployment/regular list status.* Under this method, all applicants on the reemployment list are considered before applicants on the regular employment list. On each list, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) *Selection*. When making an appointment from a priority reemployment, reemployment, or regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection for each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304. Under either method, an agency is not required to—

(1) Accord an applicant on its priority reemployment or reemployment list the preference consideration required by § 302.304 if the list on which the applicant's name appears does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his/her name has been discontinued for the position as provided in paragraph (b) of this section.

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible who is entitled to priority consideration under § 302.304 and selects a nonpreference eligible, it shall record its reasons for so doing, and shall furnish a copy of those reasons to the preference eligible or his/her representative on request. An agency may discontinue consideration of the name of a preference eligible for a position if on three occasions the agency has considered him/her for the position and has passed over his/her name and recorded its reasons for so doing.

§ 302.402 Reappointment.

An agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency's priority reemployment, reemployment, or regular employment list.

§ 302.403 Qualifications for promotion.

In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:

(a) Requirements as to age, height, and weight unless the requirement is essential to the performance of the duties of the position; and

(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

Subpart E—Appeals

§ 302.501 Entitlement.

An individual who is covered by 5 U.S.C. 8101(1) and is entitled to priority consideration under this part (see § 302.103) may appeal a violation of his/her restoration rights to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

PART 305—EXECUTIVE ASSIGNMENT SYSTEM

Subpart A—General Provisions

Sec.
305.101 Applicability of other regulations.
305.102 Coverage.
305.103 Responsibilities for administration.

Subparts B-D—[Reserved]

Subpart E—Career Executive Assignments

305.501 Filling positions covered by the executive assignment system.

Sec.
305.502 Career executive assignments of Federal employees.
305.503 Career executive assignments from outside the competitive service.
305.504 Tenure and status of persons given career executive assignments.
305.505 Position change.
305.506 Transfer.
305.507 Assignment of persons not serving with career or career-conditional tenure.
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Subpart F—Noncareer Executive Assignments

305.601 Positions filled by noncareer executive assignments.
305.602 Review of noncareer executive assignments.
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305.604 Removal.

Subpart G—Transitional Provisions

305.701 Change of indefinite or TAPER employment to another type of appointment.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 3324; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11315, 3 CFR, 1966 Comp., p. 165.

SOURCE: 33 FR 12416, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 305.101 Applicability of other regulations.

Except as otherwise provided in this part, Subchapter B of this chapter applies to employment under the executive assignment system.

§ 305.102 Coverage.

(a) *Positions.* The executive assignment system applies to positions in GS-16, 17, and 18 in the executive branch except:

(1) Positions excluded from the coverage of section 3324(a) of title 5, United States Code, by paragraphs (1), (2), and (4) thereof;

(2) Positions in the excepted schedules in Part 213 of this chapter;

(3) Positions excepted from the competitive service by statute; and

(4) Positions of Administrative Law Judge.

(b) *Persons.* The executive assignment system applies to all persons who are assigned to positions under the system.

[33 FR 12416, Sept. 4, 1968, as amended at 41 FR 51579, Nov. 2, 1976]

§ 305.103 Responsibilities for administration.

(a) *OPM responsibilities.* OPM is responsible for effectively implementing and administering the executive assignment system.

(b) *Responsibilities of the agencies.* Periodically, under such conditions as OPM may specify, the head of each agency in which there are positions covered by the executive assignment system shall review with OPM his plans for staffing upper level positions. The head of a newly established agency in which there are such positions shall initially review with OPM his plans for executive staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with OPM in establishing needed staffing facilities.

Subparts B–D—[Reserved]

Subpart E—Career Executive Assignments

§ 305.501 Filling positions covered by the executive assignment system.

An agency, in filling a position subject to the executive assignment system, shall make a career executive assignment unless OPM authorizes a limited executive assignment under § 305.509, or a noncareer executive assignment under § 305.601.

§ 305.502 Career executive assignments of Federal employees.

(a) Except as provided in paragraph (b) of this section, in making a career executive assignment, the agency shall first consider fully (1) qualified employees under its merit promotional program and (2) qualified and available Federal employees of other agencies.

(b) This section does not apply when OPM authorizes (1) the movement of an employee serving under career executive assignment to a career executive assignment at the same or lower grade under § 305.505(a) or § 305.506(a) or (2) the promotion, in the same position, of an employee whose position is reclassified upward without material change in duties.

§ 305.503 Career executive assignments from outside the competitive service.

(a) *Recruitment.* Subject to § 305.502, an agency may recruit from outside the competitive service for career executive assignment under such standards of merit and through such facilities as OPM may prescribe.

(b) *Order on list.* When an assignment is to be made under this section, the names of eligibles are entered on the appropriate list of eligibles in accordance with their numerical ratings except that the names of:

(1) Preference eligibles are listed in accordance with their augmented ratings and ahead of others having the same rating; and

(2) Preference eligibles who have a compensable service-connected disability of 10 percent or more are entered at the top of the list in the order of their ratings unless the vacancy is in a professional or scientific position. An agency is furnished a certificate from the top of the list containing the names of a sufficient number of eligibles to permit consideration of three eligibles in connection with each vacancy.

(c) *Selection.* An agency, with sole regard to merit and fitness, shall select an eligible from the highest three eligibles on the certificate who are available for appointment.

§ 305.504 Tenure and status of persons given career executive assignments.

(a) *Tenure.* A person given a career executive assignment is a career employee if he has completed, or is excepted from, the service requirement for career tenure. If he has not completed, or is not excepted from, the service requirement for career tenure he is a career-conditional employee.

(b) *Status.* A person given a career executive assignment who is required to serve or complete a probationary period by § 305.508 acquires a competitive status automatically on completion of probation.

§ 305.505 Position change.

(a) *Reassignment or demotion.* Subject to prior approval by OPM of the qualifications of the employee and, when applicable, to the provisions of Part 752 of this chapter, an agency may reassign or demote an employee serving under career executive assignment to another career executive assignment without regard to § 305.502.

(b) *Promotion.* Subject to § 305.502 and to prior approval by OPM of the qualifications of the employee, an agency may promote a career or career-conditional employee to an initial career executive assignment, or from one career executive assignment to another.

§ 305.506 Transfer.

(a) *To the same or lower grade.* Subject to prior approval by OPM of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving under career executive assignment at the same or higher grade without regard to § 305.502.

(b) *To a higher grade.* Subject to § 305.502 and to prior approval by OPM of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving with career or career-conditional tenure at a lower grade.

§ 305.507 Assignment of persons not serving with career or career-conditional tenure.

(a) *Coverage.* This section applies to present and former employees who have basic eligibility for noncompetitive appointment conferring career or career-conditional tenure under a law, Executive order, or Civil Service rule or regulation, but who are not serving with that tenure.

(b) *Authority.* Subject to § 305.502 (except for legislative and judicial employees eligible for appointment under section 3304(c) of title 5, United States Code), and subject to prior approval by OPM of the qualifications of the person, an agency may fill a position by career executive assignment of a person covered by this section.

§ 305.508 Probationary period.

An employee serving under career executive assignment serves or completes a probationary period of 1 year if a career or career-conditional employee is required by § 315.801 of this chapter to serve or to complete a probationary period under like circumstances. An agency may terminate an employee at any time during his probationary period. The employee is entitled to the procedures and the right of appeal set forth in §§ 315.804 to 315.807 of this chapter, as appropriate.

§ 305.509 Limited executive assignments.

(a) *Authorization.* OPM may authorize an agency to fill a position by limited executive assignment when:

(1) The position is expected to be of limited duration, or

(2) The agency establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for career executive assignments.

(b) *Time limit.* OPM shall specify a time limit within which an agency may use an authority for limited executive assignment, and may revoke the authority at any time.

(c) *Tenure and status.* An employee may serve a maximum of 5 continuous years and does not acquire competitive status under limited executive assignment.

(d) *Eligibility for within-grade increases.* An employee serving under a limited executive assignment is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

[35 FR 3217, Feb. 20, 1970]

§ 305.510 Change of limited executive assignment to another type of appointment.

If an employee completes 5 years of continuous service in an agency under limited executive assignment, the agency shall:

(a) Convert the limited executive assignment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by OPM of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career appointment to a continuing position in the competitive service at GS-15 or below; or

(d) Separate him from the service.

Subpart F—Noncareer Executive Assignments

§ 305.601 Positions filled by noncareer executive assignments.

(a) When, after consulting the agency concerned, OPM determines that the requirements of this section are met, it may authorize an agency to fill a position by noncareer executive assignment in the excepted service without following the procedures required for making career executive assignments.

(b) To qualify to be filled by noncareer executive assignment, a position must be one whose incumbent will:

(1) Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the Administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(c) A position does not qualify to be filled by noncareer executive assignment if its principal responsibility is the internal management of an agency, or if it involves long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature.

(d) In determining the positions to be filled by noncareer executive assignment under paragraph (a) of this section OPM shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in GS-16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which noncareer executive assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which noncareer executive assignment would be inappropriate.

§ 305.602 Review of noncareer executive assignments.

OPM shall review periodically the positions filled by noncareer executive assignments under § 305.601. After consulting the agency concerned, it shall revoke the authorization to fill a position by noncareer executive assignment when it finds that the position no longer meets the qualifying criteria. Sections 315.701 and 316.702 of this chapter do not apply when the authorization for noncareer executive assignment is revoked under this section.

§ 305.603 Status and tenure.

An employee serving under a noncareer executive assignment is in the excepted service and does not acquire a competitive status on the basis of that service. A noncareer executive assignment is made without condition or limitation, except when the appointing agency determines that the tenure is indefinite.

[35 FR 3065, Feb. 17, 1970]

§ 305.604 Removal.

Subject to the provisions of Part 752 of this chapter, an appointing officer shall remove a person from a noncareer executive assignment when the qualifications or relationships required for the assignment change or cease to exist.

Subpart G—Transitional Provisions

§ 305.701 Change of indefinite or TAPER employment to another type of appointment.

If an employee was serving under indefinite or TAPER appointment when his position was made subject to the executive assignment system and he subsequently completes 5 years of continuous indefinite or TAPER employment in the agency, the agency shall:

(a) Convert the indefinite or TAPER employment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by OPM of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career or career-conditional appointment to a continuing position in the competitive service in GS-15 or below; or

(d) Separate him from the service.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

Sec.
307.101 Definitions.
307.102 Coverage and general responsibilities.
307.103 Appointing authority.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp. p. 912; 38 U.S.C. 2014.

§ 307.101 Definitions.

In this part,

(a) the term *veteran* has the meaning given in section 2011 (2)(A), (3) and (4) of title 38, United States Code, as follows:

(1) *Veterans of the Vietnam era* means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(2) *Disabled veteran* means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(3) *Eligible veteran* means a person who (A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.

(b) *Certain veterans of the Vietnam era* means an eligible veteran of the Vietnam era who (A) has a service-connected disability, or (B) during such era, served on active duty in the Armed Forces in a campaign or expedition for which a campaign badge has been authorized.

(c) *Post-Vietnam era veteran* means an eligible veteran any part of whose active military, naval, or air service was after the Vietnam era.

(d) *Vietnam era* is the period beginning August 5, 1964 and ending May 7, 1975.

(e) *Veterans readjustment appointment* is an excepted appointment made after April 8, 1970, under this part to a position otherwise in the competitive service of certain veterans of the Vietnam era and veterans of the post-Vietnam era.

[40 FR 28445, July 7, 1975, as amended at 40 FR 44111, Sept. 25, 1975; 44 FR 3944, Jan 19, 1979; 55 FR 13500, Apr. 11, 1990]

§ 307.102 Coverage and general responsibilities.

(a) Federal agencies have the responsibility to provide the maximum of employment and job advancement opportunities to certain veterans of the Vietnam era and veterans of the post-Vietnam era who are qualified for such employment and advancement.

(b) The time limit on eligibility for appointment is the 4-year period beginning on the date of the veteran's last discharge or release from active duty or the 2-year period beginning on the date of the enactment of the law, December 18, 1989, whichever is later.

(c) The Office of Personnel Management (OPM) will prescribe instructions and guidance for implementing the Veterans Readjustment Appointment Program through the Federal Personnel Manual (FPM) system.

(d) The current statutory authority for the program extends through December 31, 1993.

[53 FR 20807, June 7, 1988, as amended at 55 FR 13500, Apr. 11, 1990]

§ 307.103 Appointing authority.

An agency may appoint any veteran who meets the basic veterans readjustment eligibility requirements provided by law as follows:

(a) Veteran of the Vietnam era who has a service-connected disability;

(b) Veteran who served on active duty during the Vietnam era in a campaign or expedition for which a campaign badge has been authorized;

(c) Post-Vietnam era veteran who is disabled;

(d) Post-Vietnam era veteran who is nondisabled.

[55 FR 13500, Apr. 11, 1990]

PART 308—VOLUNTEER SERVICE

Sec.

308.101 Definitions.
308.102 Eligibility and status.
308.103 Authority.

AUTHORITY: 5 U.S.C. 3111.

SOURCE: 44 FR 51183, Aug. 31, 1979, unless otherwise noted.

§ 308.101 Definitions.

In this part: "Student" is an individual who is enrolled not less than half-time in a high school, trade school, technical or vocational institute, junior college, college, university or other accredited educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the agency that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"Volunteer Service" under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee or to staff a position which is a normal part of the agency's work force.

§ 308.102 Eligibility and status.

(a) *Minimum Age.* The selection of students to participate under the program should be in conformance with either Federal, State, or local laws and standards governing the employment of minors.

(b) *Status.* A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

§ 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Pub. L. 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in nonpay status.

PART 310—EMPLOYMENT OF RELATIVES

Subpart A—Restrictions on the Employment of Relatives

Sec.
310.101 Coverage.
310.102 Definitions.
310.103 Restrictions.

Subpart B—Emergency Exceptions

310.201 Coverage.
310.202 Exceptions.

AUTHORITY: 5 U.S.C. 3302, 7301; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306.

SOURCE: 33 FR 12418, Sept. 4, 1968, unless otherwise noted.

Subpart A—Restrictions on the Employment of Relatives

§ 310.101 Coverage.

This subpart applies to appointment, employment, promotion, or advancement in (a) the competitive service; and (b) the excepted service in the executive branch.

§ 310.102 Definitions.

In this subpart:

(a) "Relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) "Public official" means an officer, a member of the uniformed services, an employee, and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement.

(c) "Chain of Command" is the line of supervisory personnel that runs from a public official to the head of his agency.

§ 310.103 Restrictions.

(a) A public official shall not advocate one of his relatives for appointment, employment, promotion, or advancement to a position in his agency or in an agency over which he exercises jurisdiction or control.

(b) A public official shall not appoint, employ, promote, or advance to a position in his agency or in an agency over which he exercises jurisdiction or control:

(1) One of his relatives; or

(2) The relative of a public official of his agency, or of a public official who exercises jurisdiction or control over his agency, if the public official has advocated the appointment, employment, promotion, or advancement of that relative.

(c) For the purpose of this section, a public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

(d) This section does not prohibit the appointment in the competitive service of a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

Subpart B—Emergency Exceptions

§ 310.201 Coverage.

This subpart applies to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

(5 U.S.C. 3110)

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in the Federal Personnel Manual, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a second month if the emergency need still exists.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54692, Sept. 21, 1979]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

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AUTHORITY: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; §§ 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652; §§ 315.602 and 315.604 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 315.603 also issued under 5 U.S.C. 8151, Pub. L. 93-416; § 315.605 also issued under E.O. 12034, 43 FR 1917, Jan. 13, 1978; § 315.606 also issued under E.O. 11219, 3 CFR 1964-1965 Comp., p. 303; § 315.607 also issued under 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137, 22 U.S.C. 2506, 94 Stat. 2158; § 315.608 also issued under E.O. 12721; § 315.610 also issued under 5 U.S.C. 3304(d), Pub. L. 99-586; § 315.710 also issued under E.O. 12596, 52 FR 17537; Subpart I also issued under 5 U.S.C. 3321, E.O. 12107.

SOURCE: 33 FR 12418, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—The Career-Conditional Employment System

§ 315.201 Service requirement for career tenure.

(a) *Service requirement.* Except as provided in paragraph (c) of this section, 3 years of creditable service are required for an employee to become a career employee.

(b) *Creditable service.* OPM shall publish in the Federal Personnel Manual the conditions under which service may be credited in meeting the service requirement in paragraph (a) of this section.

(c) *Exceptions from service requirement.* The service requirement for career tenure does not apply to:

(1) An appointment to a position required by law to be filled on a permanent basis, or a conversion under this part while the employee is serving in such a position;

(2) An appointment from a register of a person who once completed the service requirement for career tenure;

(3) An appointment under § 315.601 of a former Canal Zone Merit System employee who completed the service requirement for career tenure under that system; or

(4) The reinstatement of a person who once completed the service requirement for career tenure.

[33 FR 12418, Sept. 4, 1968, as amended at 43 FR 34428, Aug. 4, 1978]

§ 315.202 Conversion from career-conditional to career tenure.

A career-conditional employee becomes a career employee automatically on completion of the service requirement for career tenure.

Subpart C—Career or Career-Conditional Employment From Registers

§ 315.301 Tenure on appointment from register.

(a) Except as provided in paragraph (b) of this section, an eligible appointed from a register for other than temporary or term employment becomes a career-conditional employee.

(b) An eligible appointed from a register for other than temporary or term employment becomes a career employee when he is excepted from the service requirement for career tenure by § 315.201(c).

§ 315.302 Acquisition of competitive status.

An employee appointed as provided in § 315.301 acquires a competitive status automatically on completion of probation.

Subpart D—Career or Career-Conditional Employment by Reinstatement

§ 315.401 Reinstatement.

(a) *Agency authority.* An agency may reinstate a person who had a competitive status or was serving probation when he was separated.

(b) *Time limit.* There is no time limit on the reinstatement of a preference eligible or a person who completed the service requirement for career tenure. An agency may reinstate a nonpreference eligible who has not completed the service requirement for career tenure only within 3 years following the date of his separation.

§ 315.402 Tenure on reinstatement.

(a) Except as provided in paragraph (b) of this section, a person who is reinstated becomes a career-conditional employee.

(b) A person who is reinstated becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

§ 315.403 Acquisition of competitive status.

A person who was serving probation when he was separated and who is reinstated under § 315.401 acquires a competitive status automatically on completion of probation.

Subpart E—Career or Career-Conditional Employment by Transfer

§ 315.501 Agency authority.

An agency may appoint by transfer a career or career-conditional employee of another agency.

§ 315.502 Tenure on transfer.

(a) *General rule.* Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) *Exceptions.* (1) A career-conditional employee who transfers to a position in the postal field service or to a position required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who transfers from a position in the postal field service or from a position required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

[33 FR 12418, Sept. 4, 1968, as amended at 34 FR 6639, Apr. 18, 1969]

§ 315.503 Acquisition of competitive status.

An employee who was serving probation when he was appointed under § 315.501 acquires a competitive status automatically on completion of probation.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

§ 315.601 Appointment of former employees of the Canal Zone Merit System or Panama Canal Employment System.

(a) *Agency authority.* This section may be used by an agency to appoint noncompetitively, for other than temporary or term employment, a United States citizen separated from a career or career-conditional appointment under the Canal Zone Merit System, which was in effect before March 31, 1982, or under the Panama Canal Employment System, which became effective on March 31, 1982. (Appointments of such persons for temporary or term employment are to be made under applicable provisions of Part 316 of this chapter.)

(b) *Service requirement.* An agency may appoint such a former employee under this section only when, immediately prior to separation from a qualifying appointment, the employee served continuously for at least one year under a nontemporary appointment in the Canal Zone Merit System, the Panama Canal Employment System, or a combination of the two systems.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more career-conditional or career appointments in the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) of this section provided no more than 3 years have elapsed since:

(i) separation from a qualifying Canal Zone Merit System or Panama Canal Employment System appointment; or

(ii) separation from service in Panama in a position excluded from the Canal Zone Merit System or Panama Canal Employment System, when such service immediately followed service under a qualifying appointment in one of those systems.

(d) *Tenure on appointment.* On appointment under paragraph (a) of this section: (1) A former career employee of the Canal Zone Merit System or Panama Canal Employment System becomes a career employee.

(2) A former Canal Zone Merit System and/or Panama Canal Employment System employee whose service from the date of career-conditional appointment in the Canal Zone Merit System or Panama Canal Employment System through the date of noncompetitive appointment under this section, inclusive, does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(3) All other former Canal Zone Merit System and Panama Canal Employment System employees become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year probationary period under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) On satisfactory completion of probation in accordance with § 315.80 (a)(3) if he or she had not completed a 1-year probationary period under the Canal Zone Merit System or Panama Canal Employment System.

[48 FR 13951, Apr. 1, 1983]

§ 315.602 Appointment based on service in the Office of the President or Vice-President or on the White House Staff.

(a) *Agency authority.* An agency may appoint noncompetitively a person who has served at least 2 years in the immediate Office of the President or Vice-President or on the White House Staff, provided that the appointment is effected without a break in service of 1 full workday.

(b) *Tenure on appointment.* (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

[44 FR 54692, Sept. 21, 1979]

§ 315.603 Appointment based on former incumbency of a position brought into the competitive service.

(a) *Agency authority*—(1) *Employee in military service.* An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis and who left his position after June 30, 1950, to perform active military service when:

(i) The position was brought into the competitive service before or during his military service or during the period in which he had restoration rights thereto, and he left the position to enter military service before the end of the time limits set forth in § 315.701(c);

(ii) He has been released from military service under honorable conditions;

(iii) The agency submits a recommendation for his appointment to OPM within 6 months after release from military service under honorable conditions or after hospitalization continuing after release for not more than 1 year; and

(iv) He performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(2) *Employee separated.* An agency may appoint a former incumbent of a permanent excepted position under an appointment not limited to 1 year or less or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis, and who was separated thereafter, when:

(i) He is recommended for appointment within the time limits set forth in § 315.701(c); and

(ii) He performed 6 months of satisfactory service immediately before the date his position, was brought into the competitive service, in a position or positions brought into the competitive service or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(3) *Employee recovered from compensable injury.* An agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, when the position has been brought into the competitive service *and* when:

(i) The employee is entitled to restoration based on recovery from compensable injury in accordance with 5 U.S.C. 8151 and part 353;

(ii) The employee's position was brought into the competitive service either before the employee's separation for compensable injury or during his or her period of statutory restoration rights following such injury, and the employee's separation for compensable injury occurred before the end of the time limits set forth in § 315.701(c);

(iii) The agency initiates the appointment within 6 months after cessation of compensation; and

(iv) The employee performed 6 months of statisfactory service immediately before the date his or her position was brought into the competitive service in the civilian executive branch of the Government, unless OPM has excepted his or her particular type of case from this requirement by a provision of the Federal Personnel Manual.

(b) *Review of disapproved recommendations.* Agencies shall establish procedures for reviewing disapprovals of recommendations for appointment under this section when such review is requested within 6 months after the date of disapproval.

(c) *Tenure on appointment.* (1) Except as provided in paragraph (c)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has completed the service requirement for career

tenure or is excepted from it by § 315.201(c).

(d) *Acquisition of competitive status.* (1) A person appointed under paragraph (a)(1) of this section acquires a competitive status automatically on appointment.

(2) A person appointed under paragraph (a)(2) or (a)(3) of this section acquires a competitive status automatically on completion of probation.

[33 FR 12418, Sept. 4 1968, as amended at 43 FR 34428, Aug. 4, 1978; 54 FR 37092, Sept. 7, 1989]

§ 315.604 Employment of disabled veterans who have completed a training course under Chapter 31 of title 38, United States Code.

(a) When a disabled veteran satisfactorily completes an approved course of training prescribed by the Veterans Administration under chapter 31, title 38, United States Code, any agency may appoint the veteran noncompetitively to the position of class of positions for which trained.

(b) *Conversion.* An agency may convert to career or career-conditional employment a person appointed under paragraph (a) of this section.

(c) *Disqualifications.* Any law, Executive order, or civil service rule or regulation which would disqualify an applicant for appointment also disqualifies him or her for conversion of his or her employment to career or career-conditional employment under this section.

(d) *Tenure on approval of recommendation.* When an agency converts the employee under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (d)(2) of this section; and

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[44 FR 54692, Sept. 21, 1979, as amended at 44 FR 55132, Sept. 25, 1979]

§ 315.605 Appointment of former ACTION volunteers.

(a) *Agency authority.* An agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2051 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), or as a full-time community volunteer (including criminal justice volunteer, volunteer in justice, and VET REACH volunteer) under part C of title I of Pub. L. 93-113. To be qualifying under this section VISTA and community volunteer service must total at least 1 year. In addition, a community volunteer must have served prior to October 1, 1976.

(b) *Time limit.* An agency in the executive branch may make an appointment under this section only within 1 year after the person completes the qualifying service. (For Community volunteers who have completed their service before March 10, 1978, the 1-year period begins on March 10, 1978.) However, an agency may extend the period for 2 more years to a total of 3 years if the person, after the qualifying service, is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the agency's view, warrants extension.

(c) *Conditions.* Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) *Tenure on appointment.* (1) Except as provided in paragraph (d)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) or this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(e) *Acquisition of competitive status.* A person appointed under paragraph

(a) of this section acquires a competi-
tive status automatically on comple-
tion of probation.

[39 FR 961, Jan. 4, 1974, as amended at 43
FR 20954, May 16, 1978; 43 FR 34428, Aug.
, 1978]

315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.

Subject to the conditions prescribed
y OPM in the Federal Personnel
Manual, an agency may appoint non-
ompetitively a present or former
areer officer or employee of the For-
ign Service who was appointed under
uthority of the Foreign Service Act
f 1946, as amended (22 U.S.C. 801 et
eq.), or legislation that supplements
r replaces that Act, if:

(a) He qualifies under the require-
nents set forth in Executive Order
1219, and

(b) OPM has concurred in his
resent or former agency's plan, and
ubstantive changes thereto, for non-
ompetitive entry of civil service em-
loyees into the Foreign Service posi-
ions of that agency.

315.607 Noncompetitive appointment of present and former Peace Corps personnel.

(a) An agency in the executive
ranch may appoint noncompetitively,
or other than temporary appoint-
nent, an individual:

(1) Who has completed no less than
6 months of continuous service with-
ut a break in service of 3 days or
nore under section 7(a) of the Peace
orps Act (22 U.S.C. 2506) which per-
ains to the appointment of Peace
orps staff (not volunteers);

(2) Whom the Director of the Peace
orps certifies as having satisfactorily
erved under such an appointment;
nd

(3) Who meets OPM qualification
tandards—including any written test
equirements—for the position in
uestion.

(4) Who is not a Peace Corps volun-
eer as this paragraph does not apply
Peace Corps volunteers.

(b) *Time limitations.* (1) An individ-
al's eligibility under this section ex-
ends through September 30, 1982, or
ntil 3 years after separation from qualifying service with the Peace Corps, whichever is later.

(2) An agency may not extend this period.

(c) *Conditions.* Any law, Executive order, or regulation which disqualifies an applicant for appointment in the competitive service also disqualifies an applicant for appointment under this section.

(d) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(e) *Tenure on appointment.* (1) Except as provided in paragraph (e)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

[45 FR 43365, June 27, 1980, as amended at 46 FR 35079, July 7, 1981; 54 FR 37092, Sept. 7, 1989]

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) Under the authority of Executive Order 12721, an agency in the executive branch may appoint, noncompetitively to a competitive service position within the United States, an individual who is a citizen of or owes permanent allegiance to the United States and who—

(1) Has accumulated 12 months of creditable overseas service in an appropriated fund position(s) under a local hire appointment(s) within any 10-year period beginning after January 1, 1980;

(2) Has received a fully successful or better (or equivalent) performance rating for the period of creditable overseas service. (This requirement applies to service accrued after January 1, 1984);

(3) Was a family member of a civilian employee, a nonappropriated fund employee, or a member of a uniformed service (the sponsor) who was officially assigned to the overseas area and was in this status during the period of

creditable overseas service required in paragraph (a)(1) of this section;

(4) Has accompanied the sponsor on official assignment in the overseas area during the period of creditable overseas service;

(5) Meets all qualification requirements for the position in the United States to which being appointed, except that an agency may waive the requirement for a written test after determining that the duties and responsibilities of the position the family member occupied overseas were similar enough to those of the position for which the individual is being appointed to make the written test unnecessary; and

(6) Is appointed before January 1, 1994, or within 3 years after returning to the United States from the overseas tour of duty (during which he or she acquired eligibility by meeting the requirements of paragraphs (a)(1) through (4) of this section), or as otherwise authorized under the provisions of paragraph (f) of this section.

(b) *Definitions.* In this subpart—

"Accompanied the sponsor on official assignment in the overseas area" means that the family member resided in the overseas area while the sponsor was officially assigned to an overseas post of duty. The family member need not have physically resided with the sponsor at all times or have traveled with the sponsor to or from the overseas area.

"Creditable overseas service" means the period of employment when the employee was serving under a local hire appointment(s) with a fully successful or better performance rating and residing in the overseas area as a family member accompanying a sponsor on official assignment.

"Family member" means a spouse or an unmarried child (under 23 years of age) of a member of a uniformed service, a Federal civilian employee, or a nonappropriated fund employee officially assigned to an overseas area.

"Federal civilian employee" means an employee of the executive, judicial, or legislative branch of the Government of the United States who is officially assigned to an overseas area and serves in an appropriated fund position.

"Local hire appointment" means an appointment made from applicants residing in the overseas area that is not actually or potentially permanent. In this subpart only, this definition includes (1) nonpermanent employment as a local national employee paid from appropriated funds, or under 50 U.S.C. 403j, Pub. L. 86-36, or the Berlin Tariff Agreement; (2) overseas limited appointment under 5 CFR 301.201; (3) nonpermanent excepted appointment under Schedule A (213.3106(b)(6) or 213.3106 (d)(1)); (4) an "American family member" or "Part-time intermittent temporary" appointment in U.S. diplomatic establishments; or (5) any other nonpermanent appointment in the competitive or excepted service so designated by OPM in the Federal Personnel Manual.

"Member of a uniformed service" means personnel of the Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration officially assigned to an overseas area.

"Nonappropriated fund employee" means an employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ship's Stores Ashore, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or other instrumentalities of the United States.

"Overseas area" means a duty location outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, or the Virgin Islands.

"United States" means the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(c) *Conditions.* Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies the applicant for appointment under this section.

(d) *Tenure of appointment.* A person appointed under this section becomes a career-conditional employee.

(e) *Acquisition of competitive status.* A person appointed under this section acquires competitive status automatically upon completion of probation.

(f) *Extension of period of employment eligibility.* OPM may approve, and delegate to agencies the authority to approve, extension of an individual's appointment eligibility beyond the 3 years provided in § 315.608(a)(5) for periods equivalent to—

(1) The time an eligible family member was accompanying a sponsor on official assignment to an area of the United States with no significant Federal employment opportunities; or

(2) The time an eligible family member was incapacitated for employment.

[52 FR 15706, Apr. 30, 1987, as amended at 52 FR 38219, Oct. 15, 1987; 55 FR 42698, Oct. 23, 1990]

§ 315.609 Appointment based on service in United States positions of the Panama Canal Commission.

(a) *Agency authority.* An agency may appoint noncompetitively, for other than temporary or term employment, a United States citizen who has served under nontemporary appointment in a continuing career position of the Panama Canal Commission located in the United States.

(b) *Service requirement.* An agency may appoint such an individual under this section only when, immediately prior to separation from a qualifying appointment with the Panama Canal Commission in the United States, the individual served continuously for at least 1 year under such qualifying appointment or under a combination of such appointment and nontemporary appointment in the Canal Zone Merit System or the Panama Canal Employment System.

(c) *Time limits.* (1) There is no time limit on the appointment under this section of an employee who:

(i) Is a preference eligible; or

(ii) Has completed at least 3 years of service, which did not include any break in service longer than 30 days, under one or more nontemporary appointments in Panama Canal Commission positions located in the United States or in positions under the Canal Zone Merit System and/or the Panama Canal Employment System.

(2) An agency may appoint under this section an employee who does not meet the conditions in (c)(1) of this section only if no more than 3 years have elapsed since the individual's separation from a qualifying appointment.

(d) *Tenure on appointment.* (1) On appointment under paragraph (a) of this section, an individual whose qualifying service does not include any break in service of more than 30 days and totals at least 3 years becomes a career employee.

(2) All other individuals appointed under this section become career-conditional employees.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, if he or she has satisfactorily completed a 1-year trial period, which did not include more than 22 workdays in nonpay status, during qualifying employment with the Panama Canal Commission.

(2) On satisfactory completion of probation in accordance with § 315.801(a)(3) if he or she had not completed such a 1-year trial period.

[48 FR 29667, June 28, 1983]

§ 315.610 Noncompetitive appointment of certain National Guard technicians.

(a) An agency may appoint noncompetitively a National Guard technician who—

(1) Was involuntarily separated (other than by removal for cause on charges of misconduct or delinquency);

(2) Has served at least 3 years as a technician;

(3) Meets the qualifications requirements of the job; and

(4) Is appointed within 1 year after separating from service as a Guard Technician.

(b) The noncompetitive appointing authority also applies to National Guard technicians separated before October 29, 1986, provided they are appointed within a year of the date of separation.

[52 FR 5431, Feb. 23, 1987]

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

§ 315.701 Incumbents of positions brought into the competitive service.

(a) *Employee coverage.* This section applies to an employee retained under §§ 316.701 and 316.702 of this chapter who:

(1) Was serving in a permanent excepted position under an appointment not limited to 1 year or less, or in a public or private enterprise in a position which the agency determines to be a continuing one, at the time his position was brought into the competitive service; and

(2) Performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless OPM has excepted his particular type of case from this requirement by a provision in the Federal Personnel Manual.

(b) *Eligibility for conversion.* Within the time limits set forth in paragraph (c) of this section, the employment of an employee covered by paragraph (a) of this section may be converted to career or career-conditional employment.

(c) *Time limits.* Conversion may be initiated under paragraph (b) of this section only within 6 months after the position is brought into the competitive service, except that:

(1) When it is necessary for OPM to determine that § 316.701 or § 316.702 applies to a group of positions, the recommendation shall be submitted within 6 months after OPM advises the agency of its determination; and

(2) When an employee is absent on an assignment to an organization or agency from which reemployment rights are provided under Part 352 of this chapter or by statute, the conversion shall be initiated within 6 months after the employee's return from such assignment, when reemployment occurs within the time limits prescribed in the applicable statute or regulation;

(3) When an employee is absent on approved leave without pay, the conversion shall be initiated within 6 months of the employee's return to duty, when such return occurs within time limits authorized by the agency; and

(4) When an employee who is serving on military duty or who is separated and rehired during the 6-month period after the position is brought into the competitive service is eligible for conversion under the provisions of § 315.603, the conversion shall be initiated within the time limits prescribed by that section.

(d) *Tenure on approval of conversion.* Upon conversion under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

(f) *Review of disapproved conversions.* Agencies shall establish procedures for reviewing disapprovals of conversions under this section when such review is requested within 6 months after the date of the disapproval.

[33 FR 12418, Sept. 4, 1968, as amended at 43 FR 34428, Aug. 4, 1978]

§ 315.702 Employees serving without competitive examination in rare cases.

(a) *Recommendation by agency.* An agency may recommend to OPM that the employment of an employee who has completed at least 1 year of satisfactory service under § 316.601 be converted to career or career-conditional employment.

(b) *Tenure on approval of recommendation.* When OPM approves the agency's recommendation submitted under paragraph (a) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.703 Employees formerly reached on a register.

(a) *Employee coverage.* An employee who was serving in a position when his or her name was within reach for career or career-conditional appointment on a register appropriate for that position may be converted to career or career-conditional employment when:

(1) The employee's name was included on an appropriate certificate issued while the employee was serving in the position, or reconstruction of the appropriate register verifies that the employee would have been within reach;

(2) The register was being used for career and career-conditional appointments when he or she was reached;

(3) He or she has been continuously employed since being reached;

(4) Conversion is initiated either before the expiration of the register or during a period of continuous service since the employee was reached; and

(5) When the employee is a nonpreference eligible who was first reached after February 1, 1955, the Office, or the agency, in accordance with an agreement with the Office, determines that satisfactory reasons existed for passing over any preference eligible who preceded the employee on the register when he or she was reached and who is still within reach and available for appointment.

(b) *Tenure on conversion.* An employee whose appointment is converted under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

[44 FR 55132, Sept. 25, 1979]

§ 315.704 Conversion to career employment from indefinite or temporary employment.

(a) *General.* Employees serving after February 7, 1968, in competitive positions under indefinite appointments or temporary appointments pending establishment of a register or as status quo employees acquire competitive status and are entitled to have their employment converted to career employment when such employees:

(1) Complete a total of at least 3 years of service in such a position under one or more such appointments without a break in service of more than 30 calendar days or without an interruption by nonqualifying service of more than 30 calendar days;

(2) Have rendered satisfactory service for the 12 months immediately preceding the conversion; and

(3) Meet applicable qualification requirements for the positions and are otherwise eligible for career employment. This paragraph does not apply to employees serving under an overseas limited appointment or in positions above GS-15 or equivalent.

(b) *Creditable service.* (1) In computing creditable service under paragraph (a) of this section for an employee who left a competitive position in which he or she was serving under a qualifying appointment covered in paragraph (a) of this section to enter the armed forces and who is reemployed in such a position within 120 calendar days after separation under honorable conditions, the period from the date he or she left the position to the date of reemployment is creditable.

(2) The Office shall publish in the Federal Personnel Manual the conditions under which full-time, part-time, and intermittent employment is creditable in meeting the service require-

ment under paragraph (a) of this section.

(c) *Termination after failure to meet conversion requirements.* An employing agency shall terminate employees covered by paragraph (a) of this section not later than 90 days after they complete the 3-year service requirement referred to in paragraph (a)(1) of this section, if they have not met the requirements and conditions of paragraphs (a) (2) and (3) of this section before the end of the 90-day period. For an employee who is reemployed after intervening service in the armed forces, the 90-day period begins on the date of reemployment if the employee's combined civilian and military service satisfies the 3-year service requirement on that date.

(d) *Administrative error.* When an employee has met the service requirement under paragraph (a)(1) of this section but, because of administrative error or oversight, has not been converted to career employment within the time limits prescribed in this section, the employing agency may effect the employee's conversion as of the date on which he or she met the service requirement, even though the time limit for such conversion has expired.

[44 FR 54692, Sept. 21, 1979. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.705 Employees serving under transitional or veterans readjustment appointments.

(a) *Agency action.* (1) An agency shall convert the employment of an employee who has served continuously under a transitional appointment for at least 1 year to career or career-conditional employment within 90 calendar days after he completes the program of education or training approved for him.

(2) Within 30 calendar days after an employee completes (i) 2 years of substantially continuous service under a veterans readjustment appointment or under a combination of transitional and veterans readjustment appointments and (ii) his training or educational programs, the employing agency shall convert his appointment to career or career-conditional employment.

(b) *Tenure.* Upon conversion of his employment, the employee becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section, acquires a competitive status automatically on conversion.

[35 FR 5661, Apr. 8, 1970. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.706 Certain nonpermanent employees of the Department of Energy.

(a) *General.* Employees transferred to the Department of Energy under Pub. L. 95-91, who are serving in nonpermanent appointments made under competitive procedures of the former Atomic Energy Commission or Energy Research and Development Administration and are determined by the Department to be performing continuing functions, may be converted to career or career-conditional by OPM upon recommendation by the Department.

(b) *Tenure upon conversion.* Employees converted under this section become career-conditional employees unless they have completed the service requirement for career tenure.

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires competitive status automatically.

[43 FR 14002, Apr. 4, 1978. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.707 Disabled veterans.

(a) *Eligibility.* (1) Subject to requirements concerning qualifications and probationary period published by the Office in the Federal Personnel Manual, an agency may convert the employment of a disabled veteran who meets the conditions below to career or career-conditional employment from a time-limited appointment of more than 60 days.

(2) To be eligible for conversion under this paragraph, the veteran must:

(i) Have been retired from active military service with a disability rating of 30 percent or more;

(ii) Have been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more; or

(iii) Have had such a rating by the Veterans Administration at the time of a qualifying temporary appointment effected within the year immediately preceding the conversion.

(b) *Tenure on conversion.* (1) Except as provided in paragraph (b)(2) of this section, a person converted under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(c) *Acquisition of competitive status.* A person converted under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

[44 FR 44813, July 31, 1979. Redesignated at 44 FR 63080, Nov. 2, 1979]

§ 315.708 Conversion based on service as a Presidential Management Intern.

An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(a) Has satisfactorily completed a 2-year Presidential Management Internship at the time of conversion;

(b) Is recommended for conversion within 90 calendar days before completion of the internship; and

(c) Meets the citizenship requirement.

[44 FR 63080, Nov. 2, 1979, as amended at 47 FR 57655, Dec. 28, 1982]

§ 315.709 Mentally retarded and severely physically handicapped employees serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t) and 213.3103(u) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break or more than 30 days, under nontemporary Schedule A appointments;

(2) Are recommended for conversion by their supervisors;

(3) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications; and

(4) Are converted without a break in service of one workday.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under § 213.3102(t) or § 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[44 FR 66574, Nov. 20, 1979; 44 FR 72569, Dec. 14, 1979]

§ 315.710 Professional and administrative career employees serving under Schedule B appointments.

(a) *Coverage.* This section covers employees serving in occupations that were covered by the Professional and Administrative Career Examination on August 30, 1982, and that were listed in the consent decree entered on November 19, 1981, by the U.S. District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79-271. Those occupations are designated in these regulations as professional and administrative career (PAC) occupations or positions. OPM will publish a listing of PAC occupations in the Federal Personnel Manual.

(b) *Eligibility.* An agency may, but is not required to, convert appointments of employees occupying PAC positions under nontemporary appointments effected under § 213.3202(1) of this chapter to career or career-conditional appointments at the GS-9 level in any position in a PAC occupation when such employees—

(1) Complete at least 1 year of Schedule B service at the GS-7 level that meets the quality of experience requirement for the GS-9 position in which converted (less than full-time service is credited according to the relation it bears to the full-time workweek);

(2) Demonstrate performance that warrants conversion at GS-9 (a current performance rating of fully successful or better for the year immediately preceding conversion is necessary for this purpose);

(3) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register;

(4) Are converted without a break in service of one workday or more; and

(5) Are converted as a result of a deliberate decision by management.

(c) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes—

(1) A career-conditional employee, except as provided in paragraph (c)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under § 213.3202(l) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(d) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[52 FR 25194, July 6, 1987, as amended at 52 FR 43722, Nov. 15, 1987]

§ 315.711 Readers, interpreters, and personal assistants serving under Schedule A appointments.

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a reader, interpreter, or personal assistant:

(1) Who completed at least 1 year of satisfactory service in such a position under a non-temporary appointment under 5 CFR 213.3102(11); and

(2) Whose employment in such a position is no longer necessary for reasons beyond management control, e.g. resignation or reassignment of the employee being assisted.

(b) *Tenure on appointment.* (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

[55 FR 12327, Apr. 3, 1990]

§ 315.725 Disqualifications.

Any law, executive order, or civil service rule or regulation which would disqualify an applicant for appointment shall also disqualify an employee for conversion of his employment to career or career-conditional employment under this subpart.

[33 FR 12418, Sept. 4, 1968. Redesignated at 44 FR 63080, Nov. 2, 1979]

Subpart H—Probation on Initial Appointment to a Competitive Position

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a register;

(2) Was reinstated under § 315.401, unless during any period of service which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment which did not require him to serve a probationary period;

(3) Was appointed under § 315.601(a) as a former employee of the Canal Zone Merit System, unless he satisfactorily completed a 1-year probationary period under that system;

(4) Was appointed under § 315.603(a)(2) on the basis of his former incumbency of a position brought into the competitive service;

(5) Has had his employment converted under § 315.701 or § 315.703 from another type of employment; or

(6) Was appointed under § 315.605 as a former Peace Corps volunteer or volunteer leader or as a VISTA volunteer.

(7) Was appointed under § 315.607 as a former Peace Corps staff member under section 2(a) of the Peace Corps Act (22 U.S.C. 2506).

(b) A person who is:

(1) Transferred under § 315.501; or

(2) Promoted, demoted, or reassigned; before he completed probation is required to complete the probationary period in the new position.

(c) A person who is reinstated from the Reemployment Priority List to a position in the same agency and the same commuting area does not have to serve a new probationary period, but, if separated during probation, is required to complete the probationary period in the new position.

[33 FR 12418, Sept. 4, 1968, as amended at 39 FR 962, Jan. 4, 1974; 45 FR 43365, June 27, 1980]

§ 315.802 Length of probationary period.

(a) The probationary period required by § 315.801 is 1 year.

(b) OPM shall publish in the Federal Personnel Manual a statement of the conditions under which prior service is counted toward completion of a probationary period.

§ 315.803 Agency action during probationary period (general).

The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.

§ 315.804 Termination of probationers for unsatisfactory performance or conduct.

When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

§ 315.805 Termination of probationers for conditions arising before appointment.

When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his appointment, the employee is entitled to the following:

(a) *Notice of proposed adverse action.* The employee is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) *Employee's answer.* The employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his answer. If the employee answers, the agency shall consider the answer in reaching its decision.

(c) *Notice of adverse decision.* The employee is entitled to be notified of the agency's decision at the earliest practicable date. The agency shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of his right of appeal to the Merit Systems Protection Board (MSPB), and inform him of the time limit within which the appeal must be submitted as provided in § 315.806(d).

§ 315.806 Appeal rights to the Merit Systems Protection Board.

(a) *Right of appeal.* An employee may appeal to the Merit Systems Protection Board in writing an agency's decision to terminate him under § 315.804 or § 315.805 only as provided in paragraphs (b) and (c) of this section. The Merit Systems Protection Board review is confined to the issues stated in paragraphs (b) and (c) of this section.

(b) *On discrimination.* An employee may appeal under this paragraph a termination not required by statute which he or she alleges was based on partisan political reasons or marital status.

(c) *On improper procedure.* A probationer whose termination is subject to § 315.805 may appeal on the ground that his termination was not effected in accordance with the procedural requirements of that section.

(d) An employee may apeal to the Board under this section a termination which the employee alleges was based on discrimination because of race, color, religion, sex, or national origin; or age (provided that at the time of the alleged discriminatory action the employee was at least 40 years of age); or handicapping condition if the individual meets the definition of "handicapped person" as set forth in regulations of the Equal Employment Opportunity Commission at 29 CFR 1613.702(a). An appeal alleging a discriminatory termination may be filed under this subsection only if such discrimination is raised in addition to one of the issues stated in paragraph (b) or (c) of this section.

[33 FR 12418, Sept. 4, 1968, as amended at 40 FR 15380, Apr. 7, 1975; 44 FR 48951, Aug. 21, 1979; 55 FR 29339, July 19, 1990]

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

SOURCE: 44 FR 44811, July 31, 1979, unless otherwise noted.

§ 315.901 Statutory requirement.

5 U.S.C. 3321 provides for "a period of probation . . . before initial appointment as a supervisor or manager becomes final." It also says that a supervisor or manager "who does not satisfactorily complete the probationary period . . . shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned or promoted." This subpart contains OPM regulations implementing those requirements of law.

§ 315.902 Definitions.

In this subpart "supervisory position" and "managerial position" have the meaning given them by Chapter 315, Subchapter 9 of the Federal Personnel Manual.

§ 315.903 Coverage.

This subpart applies to appointments and positions without time limitation in the competitive civil service. Agencies may, at their option, apply these provisions to time-limited appointments and positions. This subpart does not apply to appointments or positions in the Senior Executive Service.

§ 315.904 Basic requirement.

(a) An employee is required to serve a probationary period prescribed by the agency upon initial appointment to a supervisory and/or managerial position.

(b) An employee is required to complete a single probationary period in a supervisory position and a single probationary period in a managerial position, regardless of the number of agencies, occupations, or positions in which the employee serves. However, an agency may by regulation provide for exceptions to the probationary period for managers who have satisfactorily completed a probationary period for supervisors when justified on the basis of performance and experience.

(c) Employees who, as of the date this requirement is effective, are serving or have served in Federal civilian supervisory or managerial positions without time limitation, or in time-limited supervisory or managerial positions under an official assignment exceeding 120 days, are exempt from its provisions, except that supervisors who are assigned to managerial positions may, according to agency regulations, be required to serve a probationary period for managers.

§ 315.905 Length of the probationary period.

The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.

§ 315.906 Crediting service toward completion of the probationary period.

(a) An employee who is reassigned, transferred, or promoted to another supervisory or managerial position while serving a probationary period under this subpart is subject to the probationary period prescribed for the new position. Service in the former position counts toward completion of the probationary period in the new position. If the former position was supervisory and the new position managerial, service counts in the manner prescribed by agency regulation.

(b) The conditions under which prior service is otherwise counted toward completion of the probationary period will be published in the Federal Personnel Manual.

§ 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which he or she was serving probation. The employee is eligible for repromotion in accordance with Federal Personnel Manual Chapter 335, Promotion and Internal Placement.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

[49 FR 39287, Oct. 5, 1984]

§ 315.908 Appeals.

(a) An employee who, in accordance with the provisions of this subpart, is assigned to a nonmanagerial or nonsupervisory position, has no appeal right.

(b) An employee who alleges that an agency action under this subpart was based on partisan political affiliation or marital status, may appeal to the Merit Systems Protection Board.

§ 315.909 Relationship to other actions.

(a) If an employee is required to concurrently serve both a probationary period under this subpart and a probationary period under Subpart H of this part, the latter takes precedence and completion of the probationary period for competitive appointment and fulfills the requirements of this subpart.

(b) An action which demotes an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, and an action against an employee for reasons other than supervisory or managerial performance, is governed by Part 432 or Part 752 procedures, whichever is applicable. If the employee believes an action under this subpart was based on improper discrimination or other prohibited practices under 5 U.S.C. 2302, he or she may appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission, as appropriate.

PART 316—TEMPORARY AND TERM EMPLOYMENT

Subpart A—[Reserved]

Subpart B—TAPER Employment

Sec.
316.201 Purpose and duration.
316.202 Eligibility of TAPER employees for within-grade increases.

Subpart C—Term Employment

316.301 Purpose and duration.
316.302 Selection of term employees.
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Subpart D—Temporary Limited Employment

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Subpart E—[Reserved]

Subpart F—Appointment Without Competitive Examination in Rare Cases

316.601 Appointment without competitive examination in rare cases.

Subpart G—Retention of Incumbents of Positions Brought into the Competitive Service

316.701 Public or private enterprise taken over by Government.
316.702 Excepted positions brought into the competitive service.
316.703 Effect on tenure of position change of status quo employees.

Subpart H—[Reserved]

316.801 Displacement of temporary and term employees.

AUTHORITY: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585, and E.O. 12721.

SOURCE: 33 FR 12423, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—TAPER Employment

§ 316.201 Purpose and duration.

OPM may authorize an agency to fill a vacancy by a temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified.

[38 FR 15617, June 14, 1973]

§ 316.202 Eligibility of TAPER employees for within-grade increases.

A TAPER employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart C—Term Employment

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year, in accordance with conditions published in the Federal Personnel Manual, when the needs of the service so require and the employment need is for a limited period of 4 years or less.

[43 FR 34429, Aug. 4, 1978]

§ 316.302 Selection of term employees.

(a) Except as provided in paragraphs (b) and (c) of this section, when making a term appointment an agency shall select an eligible from a register.

(b) The Office may authorize an agency to make term appointments outside a register when there are insufficient eligibles on the appropriate register.

(c) An agency may give a term appointment without regard to the existence of an appropriate register to:

(1) A person with eligibility for reinstatement;

(2) Any veteran who meets the qualifications for a veterans readjustment appointment is eligible for employment under this paragraph. The Office will prescribe instructions and

guidance in FPM Chapter 316 on implementing term employment for veterans readjustment appointment eligibles.

(3) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, 315.606, 315.608, or 315.609 of this chapter;

(4) A former term employee of the agency who left prior to the expiration of his or her appointment. Reappointment must be to a position covered by the same term authority under which the individual previously served, and service under such reappointment may not exceed the expiration date of the original term appointment;

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more.

(6) A person eligible for acquisition of competitive status for career appointment under section 3304(c) of title 5, United States Code. However, a term employee does not acquire a competitive status on the basis of this term appointment; nor does this term appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c).

[44 FR 44813, July 31, 1979, as amended at 46 FR 61065, Dec. 15, 1981; 47 FR 27539, June 25, 1982; 49 FR 5601, Feb. 14, 1984; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985; 52 FR 15706, Apr. 30, 1987; 52 FR 38219, Oct. 15, 1987; 53 FR 20808, June 7, 1988]

§ 316.303 Tenure of term employees.

(a) A term employee does not acquire a competitive status on the basis of his term appointment.

(b) The employment of a term employee ends automatically on the expiration of his term appointment unless he has been separated earlier in accordance with this chapter.

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period.

(b) The agency may terminate a term employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 316.305 Eligibility for within-grade increases.

A term employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart D—Temporary Limited Employment

§ 316.401 Purpose and duration.

OPM may authorize an agency to make a temporary limited appointment to meet an administrative need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period. An agency may make a temporary limited appointment only for a definite period of 1 year or less.

§ 316.402 Authorities for temporary appointments.

(a) *General rule.* An agency may make and extend a temporary limited appointment only with specific authorization from the Office, except under the conditions published by the Office in the Federal Personnel Manual or as provided in paragraph (b) of this section.

(b) *Noncompetitive temporary limited appointments.* An agency may give a noncompetitive temporary limited appointment without regard to the existence of an appropriate register to an individual in one of the categories set out below, and may renew such temporary limited appointments in accordance with the conditions and time limits for extension of temporary appointments published by OPM in the Federal Personnel Manual. An individual who receives a valid appointment under this paragraph will be eligible for such an extension even if his or her eligibility for a noncompetitive appointment expires or is lost (other than for personal cause) during the authorized period of temporary employment. Individuals eligible for noncompetitive temporary appointments are:

(1) A person with eligibility for reinstatement;

(2) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, 315.606, 315.607, 315.608, or 315.609 of this chapter;

(3) A former temporary employee of the agency who was originally appointed from a register, subject to the conditions published in the Federal Personnel Manual;

(4) Any veteran who meets the qualifications for a veterans readjustment appointment is eligible for employment under this paragraph. The Office will prescribe instructions and guidance in FPM Chapter 316 on temporary limited employment for veterans readjustment appointment eligibles.

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans' Administration within the preceding year as having a compensable service-connected disability of 30 percent or more.

(6) A person eligible for acquisition of competitive status for career appointment under section 3304(c) of title 5, United States Code. However, a temporary employee does not acquire a competitive status on the basis of this temporary appointment; nor does this temporary appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c).

[44 FR 44814, July 31, 1979, as amended at 45 FR 43365, June 27, 1980; 46 FR 61065, Dec. 15, 1981; 47 FR 27539, June 25, 1982; 49 FR 5601, Feb. 14, 1984; 50 FR 13173, Apr. 3, 1985; 50 FR 42509, Oct. 21, 1985; 52 FR 15706, Apr. 30, 1987; 52 FR 38219, Oct. 15, 1987; 53 FR 20808, June 7, 1988; 55 FR 13500, Apr. 11, 1990]

Subpart E—[Reserved]

Subpart F—Appointment Without Competitive Examination in Rare Cases

§ 316.601 Appointment without competitive examination in rare cases.

(a) An agency may make an appointment without competitive examination when:

(1) The duties and compensation of the position are such, or qualified persons are so rare, that in the interest of good civil service administration the position cannot be filled through open competitive examination;

(2) The person to be appointed meets all applicable qualification requirements for the position; and

(3) The appointment is specifically authorized by the Office or is made under an agreement between the agency and the Office providing for such appointments.

(b) A person appointed under paragraph (a) of this section does not acquire a competitive status on the basis of that appointment.

(c) When a position filled under paragraph (a) of this section becomes vacant, the agency may fill the vacancy by another appointment under paragraph (a) of this section only if the conditions of paragraph (a)(3) of this section are again met.

[44 FR 55132, Sept. 25, 1979]

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

§ 316.701 Public or private enterprise taken over by Government.

(a) When the Office, or an agency acting under an agreement with the Office, finds that the Federal Government has taken over a public or private enterprise, or an identifiable unit thereof, and that a position has thereby been brought into the competitive service, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a noncontinuing one, the agency shall give the employee a temporary limited appointment under the conditions prescribed by the Office in the Federal Personnel Manual.

[44 FR 55133, Sept. 25, 1979]

§ 316.702 Excepted positions brought into the competitive service.

(a) When the Office, or an agency acting under an agreement with the Office, finds that an excepted position has been brought into the competitive service by statute, Executive order, or the revocation of an exception under Civil Service Rule VI (§ 6.6 of this chapter), or is otherwise made subject to competitive examination, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section who was serving in a permanent excepted position under an appointment not limited to 1 year or less, the agency shall decide on a timely basis whether it will convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

(2) When the agency decides not to effect conversion under § 315.701 of this chapter, or the employee fails to to qualify for conversion, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An employee retained under paragraph (a) of this section who was serving in an excepted position under an appointment limited to 1 year or less is permitted to serve temporarily under the conditions prescribed by the Office in the Federal Personnel Manual.

[44 FR 55133, Sept. 25, 1979]

§ 316.703 Effect on tenure of position change of status quo employees.

(a) A status quo employee who is promoted, demoted, or reassigned becomes:

(1) An indefinite employee when the position change occurs while he is not serving overseas; or

(2) An overseas limited employee when the position change occurs while he is serving overseas.

(b) An employee referred to in paragraph (a) of this section who is changed back to his status quo position becomes a status quo employee.

Subpart H—[Reserved]

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart A—[Reserved]

Subpart B—General Provisions

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317.201 Regulatory requirements.

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317.304 Conversion of career and career-type appointees.
317.305 Conversion of excepted appointees.
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317.902 Transfers.
317.903 Details.
317.904 Change in type of SES appointment.

Subpart J—Corrective Action

317.1001 OPM authority for corrective action.

AUTHORITY: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 317.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management which implement the following provisions of law:

(a) Section 413 of title IV of the Civil Service Reform Act of 1978;

(b) Subchapter VIII of chapter 33 of title 5, U.S.C. on appointment, reassignment, and transfer in the Senior Executive Service; and

(c) Subchapter V of chapter 35 of title 5, U.S.C. on reinstatement to the Senior Executive Service.

[45 FR 8541, Feb. 8, 1980]

Subpart C—Conversion to the Senior Executive Service

SOURCE: 45 FR 8541, Feb. 8, 1980, unless otherwise noted.

§ 317.301 Conversion coverage.

(a) *When applicable.* These conversion provisions apply in the following circumstances.

(1) The implementation of the Senior Executive Service effective on July 13, 1979, and the initial conversions thereto.

(2) The implementation of the Senior Executive Service in an agency following the revocation of that agency's Presidential exclusion under 5 U.S.C. 3132(e). The Office of Personnel Management shall determine the date on which conversions under this authority shall become effective. Generally, this will be no later than six months following the effective date of the revocation of the Presidential exclusion.

(3) The implementation of the Senior Executive Service in a formerly excluded agency following statutory action extending coverage under 5 U.S.C. 3132(a)(1) to that agency. Except as otherwise provided by law, the Office of Personnel Management shall determine the date on which conversions under this authority shall become effective. Generally, this will be no later than six months following the effective date of the statutory action extending coverage under 5 U.S.C. 3132(a)(1).

(4) The exercise of a reemployment right by an individual who at the time of his/her former agency's implementation of the Senior Executive Service was under a reemployment agreement to a position in that agency which meets the grade level and functional criteria for inclusion under the Senior Executive Service. The effective date of a conversion under this authority is prescribed by § 317.302(d)(5).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been

signated a Senior Executive Service sition;

(3) An employee transferred, pro- oted, voluntarily reassigned or vol- ntarily demoted to a position after it s been designated a Senior Execu- ve Service position;

(4) An employee involuntarily reas- gned or involuntarily demoted to a sition after it has been designated a enior Executive Service position; and

(5) An employee serving in a position hich meets the grade level but not e functional criteria for designation a Senior Executive Service position.

(6) An employee appointed in his/ er former agency under a reemploy- ent right provided, however, that e employee was under a reemploy- ent agreement at the time the enior Executive Service was imple- ented in his/her former agency and at the reemployment right was to a sition which meets the grade level nd functional criteria for inclusion nder the Senior Executive Service.

(c) *Employees excluded.* The follow- g employees are excluded from cov- rage of this subpart and are not enti- ed to conversion to the Senior Execu- ive Service.

(1) An employee in a position desig- ated as Senior Executive Service who serving under a time limited ap- ointment which will terminate before he operational date of the Senior Ex- cutive Service.

(2) An employee serving under a emporary promotion, detail, or tem- orary assignment in a position desig- ated as Senior Executive Service nless the position which the employ- e encumbered on a permanent basis ust prior to the current temporary ction has been designated as Senior xecutive Service.

317.302 Conversion procedures.

(a) *Employees appointed prior to esignation; employees involuntarily eassigned or demoted after designa- ion*—(1) *Notice.* Each employee cov- ered by this subpart who was appoint- ed prior to the designation of his/her position as a Senior Executive Service position, or who was involuntarily re- assigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee's position has been designated as either "general" or "career reserved";

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4). If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his/her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service, or as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), and who are covered under § 317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his/her decision with regard to paragraphs (a)(1)(iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the right of an employee who is aggrieved to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he/she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his/her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under § 317.305(b)(3) or § 317.306(b)(3), respectively, shall also indicate whether he/she requests conversion to career appointment. Failure to respond shall be deemed a declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service*—(1) *Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his/her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his/her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) *Employees whose positions are not designated Senior Executive Service positions—Notice.* Each employee covered by § 317.301(b)(5) shall be given a written notice advising the employee that his/her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

(d) *Employees appointed under a reemployment right*—(1) *Notice.* At the time the employee exercises his/her reemployment right, the agency shall give the employee a written notice which includes the following information:

(i) A statement that the employee meets the requirements of § 317.301(b)(6) for eligibility for conversion to the Senior Executive Service and that he/she is being offered an appointment under the Senior Executive Service;

(ii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain under the type of appointment upon which the reemployment right was based;

(iii) Identification of the position,
ES pay rate, and kind of appoint-
ent which the employee will receive
the employee elects to convert to
e Senior Executive Service;

(iv) If the reemployment right is to a
osition in the excepted service and
e employee has reinstatement eligi-
ility to a position in the competitive
ervice, or, as determined by the
ffice of Personnel Management, has
ubstantial career-oriented service
nder career-type appointments as de-
ned in § 317.304(a)(2), a statement
at the employee may request con-
ersion to career appointment;

(v) A summary of the features of the
enior Executive Service (this can be
ccomplished by appending descriptive
aterial prepared by the Office); and

(vi) A statment that the employee
ust submit his/her decision with
egard to paragraphs (d)(1)(ii) and (iv)
f this section, in writing, on or before
e end of the notice period.

(2) *Pay.* Pay shall be set at an au-
orized SES pay rate. The pay rate
iven an employee upon conversion
following exercise of a reemployment
ight) shall not be less than the basic
ayable salary to which the employee
entitled upon reemployment under
art 352 of these regulations. An em-
loyee's payable salary upon conver-
ion is subject to pay limitations, if
ny, imposed by chapter 53 of title 5,
nited States Code, or other statutes.

(3) *Freedom of choice.* The employee
hall decide whether he/she accepts
onversion to the Senior Executive
ervice. The employing agency shall
ot attempt to influence the employ-
e's decision through coercion, intimi-
ation or duress.

(4) *Employee's election.* On or before
he end of the notice period, the em-
loyee shall signify in writing his/her
ecision to accept or to decline an ap-
ointment under the Senior Executive
ervice. An excepted service employee
hall also indicate whether he/she re-
uests conversion to career appoint-
ent. Failure to respond shall be
eemed a declination.

(5) *Effective date.* A conversion
nder this section for an employee
ho elects to join the SES shall
ecome effective at the end of the
otice period.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980]

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) or § 317.302(d)(4) shall remain in his/her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

[45 FR 8541, Feb. 8, 1980, as amended at 45 FR 19213, Mar. 25, 1980]

§ 317.304 Conversion of career and career-type appointees.

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office. A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by non-career executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a

Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.

§ 317.305 Conversion of excepted appointees.

(a) *Coverage.* This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of Subpart C of Part 213 of Title 5, Code of Federal Regulations;

(2) Filled by noncareer executive assignment under Subpart F of Part 305 of Title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the employee's position is designated a "general" position, the agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(2) If the employee's position is designated a "career reserved" position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The employee cannot remain in a "career reserved" position.

(3) If the employee subject to § 317.302(a) or § 317.302(d) has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the FEDERAL REGISTER.

(ii) If the employee's request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

§ 317.306 Conversion of employees under time limited appointments.

(a) *Coverage.* This section covers employees serving under:

(1) A limited executive assignment under Subpart E of Part 305 of Title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position.

(3) If the employee under a limited executive assignment has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), and

if immediately prior to the limited executive assignment and without a break in service the employee served under a career appointment or career-type appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the FEDERAL REGISTER.

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

Subpart D—Qualifications Standards

SOURCE: 54 FR 9758, Mar. 8, 1989, unless otherwise noted.

§ 317.401 General.

The head of each agency is responsible for establishing qualifications standards for Senior Executive Service (SES) positions in accordance with the procedures described in this subpart.

§ 317.402 Career reserved positions.

(a) The qualifications standard must be in writing and identify the breadth and depth of the professional/technical and executive/managerial knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(b) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(c) Each qualifications criterion in the standard must be job related. The standard may not emphasize agency-related experience, however, to the extent that it precludes otherwise well-qualified condidates from outside the agency from appointment consideration.

(d) The standard may not include—

(1) A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule;

(2) A minimum education requirement beyond that authorized for similar positions in the General Schedule; or

(3) Any criterion prohibited by law or regulation.

§ 317.403 General positions.

An agency may apply the criteria in § 317.402 when developing qualifications standards for general positions. If it does not, OPM must be consulted before the agency develops the standard.

§ 317.404 Retention of qualifications standards.

If a qualifications standard is changed, or a position is cancelled, the former standard shall be retained for 2 years.

Subpart E—Career Appointments

SOURCE: 54 FR 9758, Mar. 8, 1989, unless otherwise noted.

§ 317.501 Recruitment and selection for initial SES career appointment.

(a) *Executive Resources Board (ERB).* The head of each agency shall appoint one or more ERBs from among employees of the agency or commissioned officers of the uniformed services serving on active duty in the agency. The ERB shall, in accordance with requirements established by OPM, conduct the merit staffing process for initial SES career appointment.

(b) *Recruitment.* (1) As a minimum, the source of recruitment to fill a SES position by career appointment must include all groups of qualified individuals within the civil service (as defined by 5 U.S.C. 2101). It may also include qualified individuals outside the civil service.

(2) Announcements of SES vacancies to be filled by initial career appointment must be listed in OPM's publication of SES vacancies for such time as prescribed by OPM.

(c) *Merit staffing requirements.* As a minimum, agencies must—

(1) Provide that competition be fair and open, that all candidates compete and be rated and ranked on the same basis, and that selection be based solely on qualifications and not on political or other non-job-related factors. If a candidate is a current SES career appointee or an SES reinstatement eligible, an agency may consider the candidate either competitively or noncompetitively.

(2) Provide that the ERB consider the qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. Preliminary qualifications screening, rating, and ranking of candidates may be delegated by the ERB.

(3) Provide that the rating and ranking procedures sufficiently differentiate among eligible candidates on the basis of the knowledges, skills, abilities, and other job-related factors in the qualifications standard for the position, so as to enable the appointing authority to adequately determine those most qualified. For this purpose, eligible candidates may be grouped into broad categories, such as best qualified, well qualified, and qualified. Numerical rating and ranking are not required.

(4) Provide that the record be adequately documented to show the basis of qualifications, rating, and ranking determinations.

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates. Rating sheets may be used to satisfy the written recommendation requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

(6) Provide that the appointing authority certify in writing that the candidate selected meets the qualifications requirements of the position.

(7) Provide that the appointing authority or the ERB certify in writing that appropriate merit staffing procedures were followed.

(d) *Retention of documentation.* Agencies must keep such documentation as OPM prescribes for 2 years to permit reconstruction of merit staffing actions.

(e) *Applicant inquiries and appeals.* Individuals are entitled to obtain information from an agency regarding the process used to recruit and select candidates for career appointment to SES positions. Upon request, applicants must be told whether they were considered qualified for the position and whether they were referred for appointment consideration. Also, they may have access to questionnaires or other written material regarding their own qualifications, except for material that would identify a confidential source. There is no right of appeal by applicants to OPM on SES staffing actions taken by ERBs, Qualifications Review Boards, or appointing authorities.

§ 317.502 Qualifications Review Board certification.

(a) A Qualification Review Board (QRB) convened by OPM must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(b) Agency requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority has certified the candidate's qualifications for the position. Requests must be received within the time period prescribed by OPM.

(c) QRB certification must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. A QRB certification is valid for 3 years from the date of certification.

(d) OPM may determine the disposition of agency QRB requests if the agency head leaves office before QRB action.

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee.

(b) The probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends one calendar year later. Service as a probationer that is interrupted is creditable toward completion of the probationary period as prescribed by OPM.

(c) Removal of a career appointee during the probationary period is covered by subpart D of Part 359 of this chapter.

(d) A career appointee who resigns or is removed from the SES before completion of the probationary period may not receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB within 3 years of the previous QRB certification, unless the individual was removed for performance or disciplinary reasons.

Subpart F—Limited Emergency and Limited Term Appointments

SOURCE: 45 FR 62414, Sept. 19, 1980, unless otherwise noted.

§ 317.601 Authorization and duration.

(a) An agency may make a limited appointment only with the specific authorization of the Office of Personnel Management for use of the appointing authority.

(b) Each use of a limited appointment authority must be approved individually by the Office unless the agency has an agreement with the Office authorizing the agency to make limited appointments on its own under specified circumstances.

(c) The Office may authorize an agency to make a limited emergency appointment not to exceed 18 months to a position established to meet a bona fide, unanticipated, urgent need.

(d) The Office may authorize an agency to make a limited term appointment not to exceed 3 years to a position the duties of which will expire at the end of the period.

§ 317.602 Conditions of appointment.

(a) A limited appointment may be made only to a general position.

(b) A limited appointment is not renewable. If an agency initially made the appointment for less than the maximum period authorized by the Office of Personnel Management, however, the agency may extend the appointment to the maximum period without the approval of the Office. The Office must be notified of the extension.

(c) A limited term or limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of limited term and limited emergency appointments.

§ 317.603 Selection of limited appointees.

An agency may make a limited appointment without the use of merit staffing procedures. The appointee, however, must meet the qualifications requirements for the position, as determined in writing by the appointing authority.

§ 317.604 Reassignment of limited appointees.

An agency may make the following reassignments of limited appointees to positions for which qualified without the prior approval of the Office of Personnel Management. The Office must be notified of the reassignment, however.

(a) An agency may reassign a limited emergency appointee to another general position established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 18 months.

(b) An agency may reassign a limited term appointee to another general position the duties of which will expire at the end of 3 years or less except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

§ 317.605 Tenure of appointees.

(a) A limited appointee does not acquire status within the Senior Executive Service on the basis of the limited appointment.

(b) An agency may terminate a limited appointment at any time.

(c) The employment of a limited appointee ends automatically on the expiration of the appointment if the appointment has not been terminated earlier.

(d) An employee: (1) Who received a limited appointment without a break of service in the same agency as the one in which the employee held a career or career conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the Senior Executive Service, and

(2) Whose limited appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance, shall be entitled to be placed in his/her former position or a position of like status, tenure, and grade.

Subpart G—SES Career Appointment by Reinstatement

SOURCE: 54 FR 9759, Mar. 8, 1989, unless otherwise noted.

§ 317.701 Agency authority.

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by OPM in § 317.501(c).

§ 317.702 General reinstatement: SES career appointees.

(a) *Eligibility for general reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his or her last SES career apointment was not a removal under subpart E of Part 359 of this chapter for less than fully successful executive performance; or under 5 U.S.C. 1207 by order of the Merit Systems Protection Board as a result of a disciplinary action initiated by the Special Counsel under 5 U.S.C. 1206; or under 5 U.S.C. 7532 (National Security); or under subpart F of Part 752 of this chapter for misconduct, neglect of duty, or malfeasance; or a resignation after receipt of a notice proposing or directing removal under any of the above conditions. Removal for failure to accept a directed reassignment to another commuting area, or to accompany a position in a transfer of function to another commuting area, does not preclude reinstatement to the SES unless the appointment to the original position included acceptance of a written nationwide mobility agreement or policy.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under § 317.702 becomes an SES career appointee.

§ 317.703 Guaranteed reinstatement: Presidential appointees.

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES.

(b) *Applying for reinstatement; time limit.* Except as provided in paragraph (d) of this section, an application in writing for reinstatement under this section must be made to OPM within 90 days after separation from the Presidential appointment. An application may be submitted as soon as the Presidential appointee's resignation is requested or submitted.

(c) *Directing reinstatement.* (1) To the extent practicable, OPM will direct reinstatement within 45 days of the date of receipt by OPM of the application for reinstatement or the date of separation from the Presidential appointment, whichever is later.

(2) OPM will use the following order of precedence in directing reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee;

(iii) The agency or agencies in which the individual served as a Presidential appointee; or

(iv) Any other agency in the Executive branch with positions under the SES.

(3) The agency being directed to take the reinstatement action is responsible for assigning the individual to a position for which he or she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, OPM may, as appropriate, allocate an additional SES space authority to the agency.

(5) When a Presidential appointee tenders his or her resignation, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the appointee as an interim measure on an SES limited term or limited emergency appointment as appropriate, pending reinstatement, to preclude a break in service after the Presidential appointment has terminated.

(6) To preserve reinstatement rights under this section, an individual who has been serving in a presidential appointment, if selected by the President for another appointment in the same or a new agency, must be reinstated to an appropriate position as an SES career appointee before the effective date of the new Presidential appointment, unless service as a Presidential appointee would be continuous.

(d) *Reinstatement following direct negotiations with an agency.* (1) A Presidential appointee who qualifies under paragraph (a) of this section may initiate direct negotiations with an agency regarding reinstatement under this section.

(2) An agency may voluntarily reinstate a former Presidential appointee without an order from OPM directing such action.

(3) The agency is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) Direct negotiations with an agency do not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) *Tenure upon reinstatement.* (1) An individual reinstated under § 317.703 becomes an SES career appointee.

(2) An individual reinstated under § 317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) *Compliance.* (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

Subpart H—Retention of SES Provisions: Presidential Appointee

§ 317.801 Retention of SES provisions.

(a) *Coverage.* This subpart applies to a career appointee in the SES appointed by the President to a civilian position in the executive branch with the advice and consent of the Senate at a rate of basic pay which is equal to or greater than the rate payable for Executive Level V.

(b) *Retention of provisions.* At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions: basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. That election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.

(c) *Change in election.* Except as provided by paragraph (b) of this section, a career appointee is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.

(5 U.S.C. 3392 and 3397)

[50 FR 6154, Feb. 14, 1985]

Subpart I—Reassignments, Transfers, and Details

SOURCE: 54 FR 9760, Mar. 8, 1989, unless otherwise noted.

§ 317.901 Reassignments.

(a) In this section, "reassignment" means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of "executive agency" and 5 U.S.C. 102 for a definition of "military department.")

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) *Reassignment within a commuting area.* For reassignment within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) *Reassignment outside of a commuting area.* For reassignment outside of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to take the reassignment action.

(1) In this paragraph—

(i) "Head of an agency" means the head of an executive or military department or the head of an independent establishment.

(ii) "Noncareer appointee" includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions are not applicable to a reassignment resulting from an unsatisfactory performance rating under 5 U.S.C. 4314(b)(3) that was issued before the appointment of the person taking the reassignment action.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

§ 317.902 Transfers.

(a) *Definition.* In this section, "transfer" means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

§ 317.903 Details.

(a) *Definition.* In this section, "detail" means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) *Time limits.*

(1) Details within an executive agency or military department must be made in no more than 120-day increments.

(2) OPM may set limits on the total length of details that may be made without prior OPM approval and on the length of details from outside the SES that may be made without competition.

(c) *SES career reserved positions.* Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions.* Any SES appointee or non-SES appointee may be detailed to a general position.

§ 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action

§ 317.1001 OPM authority for corrective action.

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[54 FR 9761, Mar. 8, 1989]

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

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AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

SOURCE: 33 FR 12425, Sept. 4, 1968, unless otherwise noted.

EDITORIAL NOTE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—Discretion in Filling Vacancies

§ 330.101 Methods of filling vacancies.

An appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter. He shall exercise his discretion in each personnel action solely on the basis of merit and fitness and without the discrimination prohibited in Part 713 of this chapter.

§ 330.102 Notification of vacancies to State Job Service and Office of Personnel Management.

Federal agencies (as defined in 5 USC 5102(a)(1)) must notify State Job Service offices and the Office of Personnel Management of vacant positions in the competitive service which they intend to fill from outside the Federal service, other than through competitive examinations or hiring a person who is eligible for career service entry without competitive examination. Such notification must indicate the period during which applications will be accepted.

[44 FR 49641, Aug. 24, 1979]

Subpart B—Reemployment Priority List (RPL)

SOURCE: 53 FR 45067, Nov. 8, 1988, unless otherwise noted.

§ 330.201 Establishment and maintenance of RPL.

(a) Each agency is required to establish and maintain a reemployment priority list (RPL) for each commuting area in which it separates eligible employees due to reduction in force or compensable injury, except as provided in paragraph (b) of this section. For purposes of this subpart, "agency" means "Executive agency" as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL.

(b) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OFM concurrence that the program satisfies the basic requirements of this subpart.

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 of this part must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours of work per week, in addition to positions at the same representative rate and work schedule as the position from which the employee was or will be separated. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL.

(2) An eligible employee under § 330.204 must request reemployment within 30 calendar days after the date compensation ceases, except that when an appeal for continuation of compensation is filed, the 30-day period begins the day after resolution is reached. No specific format is required.

(b) An agency must enroll an individual on the RPL no later than 10 calendar days after receipt of an application or request.

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

(1) Be serving under an appointment in the competitive service in tenure group I or II;

(2) Have received a rating above unacceptable (level 1) as the last annual performance rating of record for Part 351 purposes (except for employees in positions excluded from a performance appraisal system by law, regulation, or OPM administrative action);

(3) Have received a specific notice of separation under Part 351 of this chapter; and

(4) Have not declined an offer under Subpart G of Part 351 of this chapter of a position with a representative rate at least as high as that of the position from which the employee was or will be separated.

(b) At the time it gives a specific RIF notice of separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL. An individual loses RPL consideration for all positions with a respesentative rate at and below that of any position for which the individual has declined an offer of career, career-conditional, or excepted appointment without time limit of failed to reply to an inquiry, under this subpart, when the position meets the acceptable conditions shown in his or her application. Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency;

(3) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, concerning a specific position having a representative rate at least as high, and with the same work schedule, as that of the position from which the person was or will be separated; or

(4) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

§ 330.204 Eligibility due to compensable injury.

(a) A former competitive service employee in tenure group I or II separated because of a compensable injury or disability (as defined in Part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL. Part 353 of this chapter contains information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the individual is entered on the RPL. An individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without time limit in any agency; or

(3) Declines an offer or fails to respond to an inquiry about a specific position that is equivalent to the position from which separated.

§ 330.205 Employment restrictions.

(a) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under Part 353 of this chapter, or is exercising other statutory or regulatory reemployment rights.

(b) Paragraph (a) of this section does not apply to actions involving employees on an agency's rolls, as authorized in chapter 330 of the Federal Personnel Manual, or when all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an inquiry about the position. Furthermore, an agency may, at its discretion, adopt provisions that permit 30-day special needs appointments and 700-hour temporary appointments of handicapped individuals.

(c) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d) of this part.

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 of this part is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent) and have no greater promotion potential than the position from which the employee was or will be separated. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under Part 351 of this chapter.

(2) An employee is considered for positions having the same work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting employees to request consideration for other work schedules in addition to that formerly held.

(3) An eligible employee may be entered on the RPL only for the commuting area in which separated and may not apply for the RPL in any other location, except as provided in paragraph (a)(4) of this section.

(4) Each eligible employee in a position in Alaska or overseas is entitled to apply for the RPL for the commuting area in which separated, unless:

(i) The employee leaves that area and makes a written request for entry on the RPL for the commuting area from which he or she was employed for Alaskan or overseas service, or in another area within the United States outside of Alaska that is mutually acceptable to the individual and the agency; or

(ii) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas service or residence, combined with prospective overseas service under available appointments, would exceed the maximum duration of an overseas duty tour in the agency rotation program. In this case, the employee may apply for one other commuting area within the United States that is mututally acceptable to the individual and the agency.

(b) An eligible employee under § 330.204 of this part is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at a time and in a manner determined appropriate by the agency.

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL but need not adopt the same method for each RPL. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL on or after this section becomes effective.

(b) *Retention standing order.* Qualified individuals shall be placed in group and subgroup order in accordance with Part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, it may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing.

(c) *Rating and ranking.* (1) An agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(2) Individuals with an eligible numerical score shall be ranked in the following order:

(i) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the position to be filled is a professional position at and above the GS-9 level, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of all other eligibles, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as an exception under paragraph (d) of this section.

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL only when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets the qualification standard and requirements for the position, including any minimum educational requirements, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition that OPM has approved for the position.

(b) An agency may make an exception to the qualification standard if:

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

§ 330.209 Appeals.

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

Subpart C—Placement Assistance Programs for Displaced Employees

SOURCE: 53 FR 28364, July 28, 1988, unless otherwise noted.

§ 330.301 Coverage.

This subpart covers placement programs for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, discontinued service retirement or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus or displaced employees, and for operating positive placement programs as set forth in § 330.307 of this subpart. OPM supplements these agency efforts by administering placement programs which give surplus or displaced employees priority referral to positions in other agencies.

§ 330.302 OPM programs.

(a) OPM operates two placement programs—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). In general, the IPAP provides placement assistance in advance of an impending work force reduction to employees who have been identified by their agencies as surplus. The DEP provides assistance to employees who have received a specific notice of separation or who have been separated.

(b) The IPAP is also used as a referral mechanism when OPM is required by statute to provide placement assistance to certain individuals.

§ 330.303 Eligibility.

(a) For the *IPAP*, the registrant must:

(1) Be serving under an appointment not limited to one year or less, in an agency whose personnel system is subject to competitive service requirements (except individuals entitled to placement assistance by law);

(2) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except employees in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(3) Have been identified as surplus under one of the following conditions:

(i) The employee is occupying a position scheduled to be abolished;

(ii) The employing agency, or one of its components, is scheduled to be abolished;

(iii) The activity in which the employee's position is located is undergoing an efficiency study under the provisions of OMB Circular A-76 and solicitation of bids has begun; or

(iv) The employee is otherwise targeted for involuntary separation; and

(4) Must register for the program within time limits specified by OPM.

(b) For the *DEP*, the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in Part 351 of this chapter (except that an employee occupying a Schedule C position as defined in Part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation through reduction in force;

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in Part 351 of this chapter);

(iii) Has been separated or furloughed because of a compensable injury in accordance with the provisions of Sub-chapter I of Chapter 81 of Title 5, United States Code;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of Title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of Title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

§ 330.304 Period of eligibility.

IPAP registrants receive placement assistance in 120-day increments renewable by the registering agencies. For the DEP, tenure group II employees receive 1 year of placement assistance and tenure group I employees receive 2 years of assistance.

§ 330.305 Placement assistance.

(a) IPAP and DEP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive registers held by OPM or by an agency with delegated examining authority. (IPAP registrants without noncompetitive appointment eligibility for competitive service positions will be referred separately for consideration for positions in the excepted service.) No individual may be selected for such a vacancy from an OPM or agency competitive register as long as a qualified DEP registrant is available. Referrals are based on the qualifications of registrants and on the duties of the positions.

(b) Placement assistance under both programs is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.

(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS-15 will receive assistance at the GS-15 level and below.

(d) When an agency selects an IPAP or DEP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

§ 330.306 Termination of eligibility.

(a) Eligibility for assistance under the *IPAP* will be terminated if one of the following occurs:

(1) The registrant's 120-day period of eligibility expires and is not renewed by the agency;

(2) The registrant requests, in writing, that placement assistance be terminated;

(3) The agency notifies OPM that the employee is no longer surplus;

(4) The registrant is placed in a nontemporary position in the competitive or excepted service, in State or local government, or in the private sector;

(5) The registrant is enrolled in the DEP; or

(6) The registrant declines an offer of continuing employment in the competitive or excepted service, in State or local government, or in the private sector, under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

(b) Eligibility for assistance under the *DEP* will be terminated if one of the following occurs:

(1) A tenure group I registrant's 2-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(2) A tenure group II registrant's 1-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of addi-

tional assistance as specified in § 330.407 of this part);

(3) The registrant requests, in writing, that placement assistance be terminated;

(4) The registrant is placed in a nontemporary position in either the competitive or excepted service; or

(5) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

§ 330.307 Agency responsibilities.

(a) *Agency programs.* (1) Each agency has a primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of its surplus and displaced employees. OPM's placement programs only supplement these efforts and are not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force, as provided for in Subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) *Registration of eligible employees.* Agencies are encouraged to participate in the IPAP and inform their employees about this program as soon as they are reasonably sure that separations will be necessary. In accordance with Subpart H of Part 351 of this chapter, agencies must inform affected employees about the Displaced Employee Program at the same time that specific reduction-in-force notices are distributed. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, and for sending them to appropriate offices as instructed by OPM.

(c) *Consideration of individuals referred.* Agencies will give full consideration to individuals referred through OPM's placement programs. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability, and an interview, if possible, to further assess the registrant's ability to perform the duties of the position within a reasonable period of time. An appointing officer may not pass over a DEP eligible to select a non-DEP eligible unless an objection to the DEP eligible is sustained by OPM or an agency with delegated examining authority. The objection procedure does not apply to IPAP registrants.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to hereinafter in this subpart as restricted positions), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only in particular types of cases as determined by OPM. OPM shall publish in the Federal Personnel Manual a statement of the circumstances under which a restricted position may be filled by noncompetitive action.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A-76. Preference eligibles are entitled to additional placement assistance through the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). These preference eligibles must: (a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and § 330.401 of this part, and further defined in the Federal Personnel Manual; (b) be in the competitive service (in tenure group I or II); and (c) meet the eligibility requirements of the IPAP or the DEP which are described in Subpart C of this part.

[50 FR 39877, Sept. 30, 1985 as amended at 53 FR 28366, July 28, 1988]

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with Subpart B of this part and Subpart J of Part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPAP or the DEP at least 60 days before the effective date of separation. Agencies, however, are encouraged to notify employees of their right to placement assistance through the IPAP as soon as they receive approval to convert a restricted position to contract performance.

(d) Assuring that OMB's policy directives on the preference eligibles' right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;

(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

[50 FR 39877, Sept. 30, 1985]

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs.

(b) Making priority referral in accordance with § 330.304 of Subpart C of this part.

(c) Assuring that all agencies that have vacancies to fill through the competitive examining process give full consideration to adversely affected preference eligibles registered in the IPAP and DEP.

(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.

(e) Monitoring this placement assistance through IPAP and DEP procedures.

[50 FR 39877, Sept. 30, 1985]

§ 330.407 Duration of eligibility for assistance.

Adversely affected preference eligibles may remain in the DEP for 6 months after their normal DEP eligibility expires and, upon their request, are entitled to a second 6-month extension. Eligibility may, however, be terminated earlier in accordance with DEP procedures.

[50 FR 39877, Sept. 30, 1985]

Subpart E—Restrictions To Protect Competitive Principles

§ 330.501 General restriction on movement after competitive appointment.

An agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee's latest nontemporary competitive appointment. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

[37 FR 11965, June 16, 1972]

§ 330.502 Additional restrictions relating to time in grade.

In applying the time-in-grade restrictions of Subpart F of Part 300 of this chapter to an employee serving with career or career-conditional tenure acquired through competitive appointment, prior service under nonpermanent appointment at a level above that of his competitive appointment shall be credited as if it had been performed at the level of his competitive appointment.

[34 FR 2649, Feb. 27, 1969]

§ 330.503 Assessment of compliance with competitive principles.

As one factor in assessing an agency's compliance with competitive principles, OPM will consider the relationship between appointments from competitive examinations and subsequent position changes. When OPM finds that an agency has not complied with competitive principles, either in an individual case or on a program basis, OPM will require the agency to take appropriate corrective action.

[37 FR 11965, June 16, 1972]

§ 330.504 Special restrictions after appointment under Part-time Direct Hire Program.

(a) A person hired under the Part-time Direct Hire Program may not be changed to full time through:

(1) Position change;

(2) Work schedule change;

(3) Transfer; or

(4) Reinstatement based on appointment under the Part-time Direct Hire Program until he or she has completed at least 1 calendar year of service in a part-time position under the program.

(b) In the event of a break in service, the service requirement in paragraph (a) of this section is computed on the basis of the employee's total time in a pay status, 365 days equaling 1 calendar year.

(c) Agencies may waive this restriction only in the event of extreme personal hardship to the employee.

[45 FR 65493, Oct. 3, 1980]

§ 330.505 Nonapplicability to persons within reach on registers.

The restrictions in this subpart do not apply to a person who is within reach on a register for competitive appointment to the position to be filled.

[34 FR 2649, Feb. 27, 1969]

Subpart F—Prohibited Practices

§ 330.601 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government shall not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. OPM shall cancel the application or eligibility of an applicant or eligible who violates this section, and shall impose such other penalty as it considers appropriate.

Subpart G—Placement Program for Nonstatus Individuals Receiving Compensation for Work Injuries and for Certain Disability Annuitants

§ 330.701 Coverage.

This subpart applies to each present or former employee who is not eligible for assistance under Subpart C of this part and who—

(a) Was separated or furloughed because of a compensable injury sustained under the provisions of subchapter I of chapter 81 of title 5, United States Code; or

(b) Has been retired under sections 8337 or 8451 of title 5, United States Code.

[40 FR 23836, June 3, 1975 as amended at 53 FR 28366, July 28, 1988]

§ 330.702 Placement assistance.

Subject to the conditions published by OPM in the Federal Personnel Manual, an employee covered by this subpart may apply for examination by OPM for any position for which there is a register established or about to be established under open competitive examination. OPM enters the names of employees applying under this section on the appropriate registers in the order provided in § 332.401 of this chapter.

[35 FR 413, Jan. 13, 1970]

Subpart H—Placement Assistance for Military Reserve and National Guard Technicians Who Become Entitled to a Disability Annuity

§ 330.801 Coverage.

This subpart applies to current or former Military Reserve and National Guard Technicians who—

(a) Are separated from such positions (or, in the case of National Guard Technicians, were separated from such positions on or after December 31, 1979) because of a medical disability that disqualified them from membership in the Army or Air Force Reserve or the National Guard or from holding the military grade required for such employment;

(b) Have not been found by OPM to be disabled under subchapter III of chapter 83 of title 5, United States Code, section 8337(a), or under subchapter V of chapter 84 of title 5, United States Code, section 8451;

(c) Have applied for or are receiving an annuity under the provisions of subchapter II of chapter 83 of title 5, United States Code, section 8337(h), or under the provisions of subchapter V of chapter 84 of title 5, United States Code, section 8457; and

(d) In the case of National Guard Technicians, are not eligible for assistance under the Displaced Employee Program described in Subpart C of this part.

[52 FR 37762, Oct. 9, 1987]

§ 330.802 OPM assistance.

An employee covered by this subpart is subject to mandatory enrollment in an OPM placement assistance program. Such an employee shall receive priority consideration for vacant positions in the Federal Government in accordance with the provisions of § 330.803 of these regulations.

[48 FR 39210, Aug. 30, 1983]

§ 330.803 Priority referral.

(a) An employee covered by this subpart shall be referred, both by OPM and agencies with delegated examining authority, and considered by any agency of the Government for any vacant position at GS-15 and below or the equivalent whenever—

(1) An agency plans to seek or is seeking the names of qualified candidates from a register or registers of competitive eligibles maintained by OPM or agencies with delegated examining authority;

(2) The position is expected to last more than one year;

(3) The position is located within the commuting area of the employee's former National Guard Technician position;

(4) The position is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated; and,

(5) The employee is qualified for the vacant position as determined by the head of the agency or his/her designee.

In addition, OPM and agencies with delegated examining authority will refer the names of employees covered by this subpart whenever an agency requests recruiting assistance for positions in the excepted service.

(b) When an agency selects an individual under this subpart, it will generally employ him or her in the competitive service if he or she is eligible for reinstatement under § 315.401, for transfer under § 315.501, or for noncompetitive appointment under § 315.610 of this chapter. When the individual selected is not eligible for appointment in the competitive service, the agency may employ him or her under authority of Part 213, Subpart C, § 213.3102(j) of the excepted service or other appropriate excepted service appointing authorities.

[48 FR 39210, Aug. 30, 1983, as amended at 52 FR 37762, Oct. 9, 1987]

§ 330.804 Department of Defense responsibility for placement assistance.

(a) The Department of Defense shall, as the Government agency employing National Guard Technicians and in accordance with its own personnel management policies and practices, ensure that employees covered by this subpart receive appropriate consideration as defined by the Department of Defense for positions within the military departments and defense agencies for which the head of that department or agency, or his/her designee, determines that the individual is qualified, which is in the same commuting area and which is at the same grade or equivalent level as the National Guard Technician position from which the employee was separated.

(b) For Military Reserve or National Guard Technicians who are separated because of a medical disability that disqualified him/her from membership in the Military Reserve or National Guard or from holding the military grade required for such employment, internal Department of Defense placement consideration shall begin as soon as the determination has been made by the department or its appropriate component that the technician is no longer qualified for membership in the Military Reserve or National Guard and shall continue after the date of actual separation from the Military Reserve or National Guard Technician position in accordance with paragraph (a) of this section. The Department of Defense or its appropriate component will also be responsible for enrolling such individuals into OPM's placement assistance program as soon as is reasonably possible, with the expectation that, in most cases, enrollment can be made within 15 calendar days following the actual date of separation from the Military Reserve or National Guard Technician position.

[48 FR 39210, Aug. 30, 1983, as amended at 52 FR 37762, Oct. 9, 1987]

§ 330.805 Duration of eligibility for assistance.

(a) An employee covered by this subpart is eligible for OPM placement assistance without time limit. Eligibility will, however, be terminated upon—

(1) His/her reemployment by a Federal department or agency in a nontemporary position;

(2) His/her declination of any position in the Government for which he/she has been found qualified by the head of the agency or his/her designee, and which is at the same grade or equivalent level, in the same commuting area and with at least the same tenure and work schedule as the

former Military Reserve or National Guard Technician position;

(3) His/her restoration to earning capacity as determined by OPM pursuant to the terms of section 8337 or section 8455 of title 5, United States Code; or.

(4) Any other circumstance which terminates his/her eligibility for an annuity under section 8337(h)(1) or section 8457 of title 5, United States Code.

(b) When an agency appoints a former Military Reserve or National Guard Technician who has applied for or is receiving an annuity under section 8337(h) or section 8457 of title 5, United States Code, *or* when an agency makes an offer of a position which conforms to the requirements of paragraph (a)(2) of this section and the offer is declined, the agency shall notify OPM of such an appointment or declination. This notification shall include the date of the appointment or declination and, if an appointment, the title, pay plan, series, grade, and rate of pay of the position.

[48 FR 39210, Aug. 30, 1983, as amended at 52 FR 37762, Oct. 9, 1987]

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Subpart A—General Provisions

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332.103 Filling certain postmaster positions.

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GENERAL

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332.313 Preference eligibles separated from competitive positions.
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Sec.

RESTORATION OF ELIGIBILITY

332.321 Preference eligibles who resigned from competitive positions.
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332.406 Objections to eligibles.
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AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12426, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 332.101 General policy of competition.

(a) Examinations for entrance into the competitive service shall be open competitive, except that OPM may authorize noncompetitive examinations when sufficient competent persons do not compete.

(b) An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.

§ 332.102 Definitions.

In this part:

(a) "Certificate" means a list of eligibles from a register submitted to an appointing officer so that he may consider the eligibles for appointment.

(b) "Active military duty" means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training.

§ 332.103 Filling certain postmaster positions.

(a) When a vacancy occurs or is about to occur in a postmaster position in a fourth-class post office and the position involves fewer than 7 daily hours of service, a representative of the U.S. Postal Service shall visit the locality and, after due public notice has been given, accept applications from interested persons. The representative shall establish a register based on the qualifications and suitability of each applicant and on his ability to provide proper facilities for transacting the business of the office. The U.S. Postal Service shall submit to OPM for postaudit one copy of the representative's report showing the qualifications of all applicants, the basis for ranking the eligibles, and the selection of an eligible from the register. The report shall be accompanied by the applications of all applicants. A person selected for appointment from such a register may be appointed after the date the postmaster position is determined to involve 7 or more daily hours of service only with the prior approval of OPM.

(b) When making an appointment from a register established under paragraph (a) of this section, the appointing officer shall select an eligible in accordance with §§ 332.404 through 332.407.

(c) When OPM, after holding two examinations, is unable to secure a complete certificate of three eligibles for a postmaster position involving 7 or more daily hours of service, it may authorize the establishment of a register and selection therefrom in accordance with paragraphs (a) and (b) of this section.

[34 FR 19748, Dec. 17, 1969]

Subpart B—[Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

§ 332.301 Termination of eligibility.

(a) Except as provided in paragraph (b) of this section, a person's eligibility on a register is terminated when:

(1) He accepts a career or career-conditional appointment from the register; or

(2) OPM terminates the eligibility of all persons on the register.

(b) OPM may determine that in particular types of cases eligibility may not be terminated in less than 1 year. OPM shall publish in the Federal Personnel Manual the conditions under which eligibility may not be terminated in less than 1 year.

ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

§ 332.311 Quarterly examinations.

(a) A 10-point preference eligible is entitled to file an application at any time for an examination for any position for which OPM maintains a register, for which a register is about to be established, or for which a nontemporary appointment was made in the preceding three years. For the purposes of this paragraph OPM shall hold an examination not later than the quarterly period succeeding that in which the application is filed.

(b) When there is no appropriate existing register, OPM may establish special registers containing the names of eligibles from the quarterly examinations authorized by paragraph (a) of this section, together with the names of eligibles described in § 332.322, and use these registers for certification to fill appropriate vacancies.

[35 FR 414, Jan. 13, 1970, as amended at 41 FR 22549, June 4, 1976]

§ 332.312 Applicants in military or overseas service.

Subject to the time limits and other conditions published by OPM in the Federal Personnel Manual, the following persons are entitled to file applications for open competitive examinations after the closing date for receipt of applications when there is an existing register or a register about to be established:

(a) A person who could not file an application during the filing period, or appear for an assembled examination, because of military service, or hospitalization continuing for 1 year or less following discharge from military service;

(b) An employee of the Federal Government who, as a member of a reserve unit of the military service, could not file an application during the filing period, or appear for an assembled examination, because of active duty beyond 15 days with the military service even though the duty is designated for training purposes; and

(c) A United States citizen who could not file an application during the filing period, or appear for an assembled examination, because of overseas service with a Federal agency or with an international organization in which the United States Government participates.

§ 332.313 Preference eligibles separated from competitive positions.

The following persons are entitled to have their names entered on an appropriate existing register in the order prescribed by § 332.401 if they were last employed under career or career-conditional appointments:

(a) A preference eligible who is declared eligible therefor after appeal from furlough or discharge; and

(b) A preference eligible who has been furloughed or separated without delinquency or misconduct and who applies within 90 days after furlough or separation.

§ 332.314 Displaced employees eligible for placement assistance.

Subject to the time limits and other conditions published by OPM in Federal Personnel Manual Chapter 332, a person who is eligible for placement assistance through the Displaced Employee Program described in Subpart C of Part 330 of this chapter is entitled to file applications for competitive examinations after the closing date for receipt of applications when there is an existing register or a register is about to be established. Applications may be filed at any grade or level above the position from which the person is about to be or was displaced, for which such person is qualified.

[53 FR 28366, July 28, 1988]

RESTORATION OF ELIGIBILITY

§ 332.321 Preference eligibles who resigned from competitive positions.

A qualified preference eligible who resigned without delinquency or misconduct from career or career-conditional employment is entitled to have his name reentered on each register on which his name formerly appeared (or on a successor register) if he applies within 90 days after separation.

§ 332.322 Persons who lost eligibility because of military service.

(a) A person who lost a period of eligibility on a register because he has served on active military duty since June 30, 1950, is entitled to have his name restored to that register or a successor register when he meets the following conditions:

(1) He has not served more than four years following the date of his entrance on active military duty, exclusive of any additional service imposed pursuant to law. The date of entrance on duty means the first date between June 30, 1950, and July 1, 1971, on which he began a new period of active military duty, whether it was by original entry, reentry or extension.

(2) He is honorably separated from active military duty.

(3) He applies for restoration of eligibility within 90 days after discharge from active military duty or from hospitalization continuing for 1 year or less following separation from active military duty.

(4) He is still qualified to perform the duties of the position for which the register is used.

(b) When a person is entitled to have his name restored to a register under paragraph (a) of this section, OPM shall enter his name at the top of the appropriate group on the register if another eligible standing lower on the register on which his name formerly appeared was given a career or career-conditional appointment from that register. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

(c) When there is no appropriate existing register, OPM may establish special registers containing the names of persons entitled to priority of certification under paragraph (b) of this section, together with the names of eligibles described in § 332.311, and use these registers for certification to fill appropriate vacancies.

[33 FR 12426, Sept. 4, 1968, as amended at 35 FR 414, Jan. 13, 1970]

§ 332.323 Employees separated during probation.

An employee who is separated (voluntarily or involuntarily) without delinquency or misconduct during his probationary period is entitled to have his name restored to the register of eligibles from which he was appointed, if he applies for restoration while the register is still in use.

Subpart D—Consideration for Appointment

§ 332.401 Order on registers.

Subject to apportionment, residence, and other requirements of law and this chapter, OPM shall enter the names of eligibles on the appropriate register in accordance with their numerical ratings, except that the names of:

(a) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(b) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

§ 332.402 Regular order of certification for appointment.

When OPM receives a request for certification of eligibles, it shall prepare a certificate from the top of the appropriate register containing the names of a sufficient number of eligibles to permit the appointing officer to consider three eligibles in connection with each vacancy.

§ 332.403 Selective certification.

When there is no register appropriate as a whole for the certification of eligibles for a particular position, OPM may prepare a certificate from the most nearly appropriate existing register by the selective certification of eligibles qualified for the particular position in the order of their ranking on the register. Special overseas selection factors may also be used as a basis for selective certification from a register used for filling overseas positions. When appropriate, OPM may rerate the eligibles on the register on the basis of the particular requirements of the position.

§ 332.404 Order of selection from certificates.

An appointing officer, with sole regard to merit and fitness, shall select an eligible for:

(a) The first vacancy from the highest three eligibles on the certificate who are available for appointment; and

(b) The second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment.

§ 332.405 Three considerations for appointment.

An appointing officer is not required to consider an eligible who has been considered by him for three separate appointments from the same or different certificates for the same position.

§ 332.406 Objections to eligibles.

(a) An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by OPM for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by OPM to be disqualifying for the particular position. OPM may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

(b) An appointing officer may not pass over a preference eligible to select a non-preference eligible unless an objection to the preference eligible is sustained by OPM.

(c) Pending OPM action on an agency's objection to an eligible, the agency may not appoint an eligible who would be within reach only if the objection is sustained.

(d) Paragraphs (b) and (c) of this ection, do not apply if the agency has more than one position to fill from the ame certificate and holds a position for the individual objected to in the event OPM does not sustain the objecion

(e) Agencies shall follow the procedures for objecting to an eligible pubished by OPM in the Federal Personnel Manual.

42 FR 61240, Dec. 2, 1977]

332.407 Restriction of consideration to one sex.

An appointing officer may not retrict his consideration of eligibles or employees for competitive appointment or appointment by noncompetiive action to a position in the competitive service to one sex, except in unusual circumstances when OPM finds the action justified.

34 FR 5367, Mar. 19, 1969. Redesignated at 42 FR 61240, Dec. 2, 1977]

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

Subpart A—General Provisions

Sec.

333.101 Standards for temporary and term appointments outside the register.
333.102 Preference in temporary and term appointments outside the register.

Subpart B—Consideration for Appointment

333.201 Making appointments from an unranked list.
333.202 Making appointments from a numerically ranked list.

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—General Provisions

333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise speciy in the Federal Personnel Manual, an agency, in making a temporary or erm appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he is not disqualified for any of the reasons listed in §§ 339.101 and 731.201 of this chapter. Candidates found to be qualified shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

[33 FR 12428, Sept. 4, 1968; as amended at 53 FR 35293, Sept. 13, 1988]

§ 333.102 Preference in temporary and term appointments outside the register.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as "CP" for preference eligibles under section 2103(3)(C) of title 5, United States Code, and as "IP" for all other preference eligibles under that title. (At its discretion, the agency may use the notation "XP" for preference eligibles under section 2108(3) (D) through (G) of title 5, but those eligibles will not be distinguished from "IP" eligibles in the referral process.)

[53 FR 35293, Sept. 13, 1988]

Subpart B—Consideration for Appointment

§ 333.201 Making appointments from an unranked list.

In making temporary and term appointments from a list of eligible candidates who have not received numerical scores, an agency shall give preference to preference eligibles as follows:

(a) For professional and scientific positions at the GS-9 level or above, or equivalent, preference should be given to preference eligibles without regard to the type of preference.

(b) For other positions, preference shall be given first to preference eligibles with compensable service-connected disability of 10 percent or more, and second to other preference eligibles.

(c) Except as provided in paragraphs (b) and (c) of § 333.202, qualified candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.

[Redesignated and amended at 53 FR 35294, Sept. 13, 1988]

§ 333.202 Making appointments from a numerically ranked list.

(a) *Establishing the list.* An agency shall enter the names of all applicants having an eligible numerical score on the employment list in the following order:

(1) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level and above, or equivalent.

(2) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

(b) *Selection.* When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection from not more than the highest three names available for appointment in the order provided in paragraph (a) of this section, except that an agency is not required to—

(1) Consider an applicant who has previously been considered three times by the same appointing officer for positions at the same grade level and for the same line of work;

(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in paragraph (c) of this section.

(c) *Passing over a preference eligible.* When an agency making an appointment passes over the name of a preference eligible who is entitled to prior consideration under paragraph (a) of this section and selects a nonpreference eligible, the agency must record its reasons for so doing and must furnish a copy of those reasons to the preference eligible and to his or her representative on request. An agency may discontinue consideration of a preference eligible for a position if, on three occasions, the agency has considered the candidate for the position and has passed over his or her name and recorded its reasons for so doing.

[53 FR 35294, Sept. 13, 1988]

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL AGENCIES AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS

Sec.
334.101 Purpose.
334.102 Definitions.
334.103 Certification of instrumentalities or authorities of State and local governments and "other organizations".
334.104 Length of assignment.
334.105 Obligated service requirement.
334.106 Requirement for written agreement.
334.107 Termination of agreement.
334.108 Reports required.

AUTHORITY: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975).

SOURCE: 44 FR 25394, May 1, 1979, unless otherwise noted.

§ 334.101 Purpose.

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service Reform Act which authorize the temporary assignment of employees between Federal agencies and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

§ 334.102 Definitions.

In this part: "Assignment" means a period of service under chapter 33, subchapter VI of title 5, United States Code;

"Employee" means an individual serving in a Federal agency under a career or career-conditional appointment including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions, and presidential management interns; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

"Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

"Institution of higher education" means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

"Indian tribal government" refers to any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 668) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, S. 105);

"Local government" means any political subdivision, instrumentality, or authority of a State or States; and any general or special purpose agency of such a political subdivision, instrumentality, or authority;

"Other organization" means a national, regional, Statewide, areawide, or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, education, or development services, or related services to governments or universities concerned with public management; and

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and a territory or possession of the United States: and an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

§ 334.103 Certification of instrumentalities or authorities of State and local governments and "other organizations".

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Office of Personnel Management before they will be eligible to enter into a mobility agreement with a Federal agency.

(b) Written requests for certification shall include a copy of the organization's:

(1) Articles of incorporation;

(2) Bylaws;

(3) Internal Revenue Service nonprofit statement; and

(4) Any other information describing the organization's activities as they relate to the public management concerns of governments or universities.

(c) Requests should be mailed to the following address: Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, P.O. Box 14184, Washington, DC 20044.

[45 FR 996, Jan. 4, 1980]

§ 334.104 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of a Federal agency for up to 2 more years, given the concurrence of the other parties to the agreement.

(b) A Federal agency may not send or receive on assignment an employee who has served under the mobility authority for 4 continuous years without at least a 12-month return to duty with the level of government or the organization from which originally assigned.

(c) Successive assignments without a break of at least 60 calendar days will be regarded as continuous service under the mobility authority.

(d) A Federal agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. The Office of Personnel Management may waive this provision upon the written request of the agency head.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.105 Obligated service requirement.

A Federal employee assigned under this subchapter must agree as a condition of accepting an assignment to serve with the Federal Government upon the completion of the assignment for a period equal to the length of the assignment.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.106 Requirement for written agreement.

(a) Before an assignment is made the Federal agency and the State, local or Indian tribal government, institution of higher education, or other eligible organization and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373-3375 and in Federal Personnel Manual Chapter 334.

(b) Where the Federal agency pays more than 50 percent of costs of the mobility assignment involving a Federal employee and the period of assignment exceeds 6 months, the agency must document the rationale for the cost-sharing arrangements in the mobility agreement.

(c) Two copies of the original agreement, as well as any modification must be sent to the Office of Personnel Management within 15 days of the date that the assignment or modification becomes effective.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

§ 334.107 Termination of agreement.

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other participating organization. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated, automatically, when the employer/employee relationship ceases to exist between the assignee and his or her original employer.

(d) The Office of Personnel Management shall have the authority to direct Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.

[44 FR 25394, May 1, 1979. Redesignated and amended at 45 FR 996, Jan. 4, 1980]

§ 334.108 Reports required.

A Federal agency which assigns an employee to or receives an employee from a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[44 FR 25394, May 1, 1979. Redesignated at 45 FR 996, Jan. 4, 1980]

PART 335—PROMOTION AND INTERNAL PLACEMENT

Subpart A—General Provisions

Sec.
335.101 Effect of position change on status and tenure.
335.102 Agency authority to promote, demote, or reassign.
335.103 Agency promotion programs.
335.104 Eligibility for career ladder promotion.

AUTHORITY: 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954-1958 Comp. p. 218.

Subpart A—General Provisions

§ 335.101 Effect of position change on status and tenure.

(a) *Status.* A position change authorized by § 335.102 does not change the competitive status of an employee.

(b) *Tenure.* Except as provided in paragraph (c) of this section and § 316.703 of this chapter, a position change authorized by § 335.102 does not change the tenure of an employee.

(c) *Exceptions.* (1) A career-conditional employee who is promoted, demoted, or reassigned to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who is promoted, demoted, or reassigned from a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

[33 FR 12428, Sept. 4, 1968]

§ 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to §§ 305.502 and 305.505 of this chapter, an agency may:

(a) Promote, demote, or reassign a career or career-conditional employee or an employee serving under career executive assignment;

(b) Reassign an employee serving under a temporary appointment pending establishment of a register to a position to which his original assignment could have been made by the same appointing officer from the same recruiting list under the same order of consideration;

(c) Promote, demote, or reassign an employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment to another position to which an initial appointment under § 301.201, § 301.202, or § 301.203 of this chapter is authorized;

(d) Promote, demote, or reassign (1) a status quo employee and (2) an employee serving under an indefinite appointment in a competitive position, except that this authority may not be used to move an employee:

(i) From a position in which an initial overseas limited appointment is authorized to another position; or

(ii) To a position in which an initial overseas limited appointment is authorized from another position; and

(e) Promote, demote, or reassign a term employee serving on a given project to another position within the project which the agency has been authorized to fill by term appointment;

(f) (1) Except as otherwise specifically authorized by OPM, temporarily promote an employee to meet a temporary need for a definite period of 1 year or less and extend such a promotion for a definite period not to exceed 1 additional year. At the end of the period for which the agency temporarily promoted the employee, or when the agency determines that it no longer needs the employee in the position, the agency shall return the employee to the position from which it temporarily promoted him, except when it reassigns or demotes him, without time limitation and with his consent, to a different position. The return of an employee to the position from which the agency temporarily promoted him under this subparagraph or his reassignment or demotion to a different position that is not at a lower grade or level than the position from which he was temporarily promoted is not subject to Parts 351, 752, 771 or Part 772 [1] of this chapter.

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under a career executive assignment, an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

(g) After entering into a formal agreement with the Office (OPM), promote an employee for a limited term in excess of 2 years but not more than 4 years to complete a designated project, or as part of a planned rotational system for a definite period. Upon the approval of the Office, an agency may extend the period 1 year for a total of 5 years. OPM will consider such requests only on a case-by-case basis.

(1) Upon completion or termination of the assigned project or the termination of the specified rotation period, the agency shall return the employee from the term promotion to the position from which he or she was promoted or to a position of equivalent grade and pay.

(2) The return of an employee to the position from which he or she was promoted to a position of equivalent grade and pay is not subject to Parts 351, 432, 752, and 771, of this chapter. Termination of an employee promoted under this paragraph for any other reason, such as unacceptable performance or misconduct, is covered by the appropriate part of this chapter (Part 432 or 752).

[33 FR 12428, Sept. 4, 1968, as amended at 35 FR 13075, Aug. 18, 1970; 45 FR 24855, Apr. 11, 1980]

§ 335.103 Agency promotion programs.

Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program shall conform with the standards and requirements of OPM.

[38 FR 18445, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under Part 430 of this chapter is "Fully Successful" (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

[51 FR 8411, Mar. 11, 1986]

PART 337—EXAMINING SYSTEM

Subpart A—General Provisions

Sec.

337.101 Rating applicants.
337.102 Evaluating qualifications for employees who are in a retained grade.

Subpart A—General Provisions

§ 337.101 Rating applicants.

(a) OPM shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as provided in § 930.203(a) of this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

(b) OPM shall add to the earned numerical ratings of applicants who make a passing grade:

(1) Five points for applicants who are preference eligibles under section 2108(3)(A) and (B) of title 5, United States Code; and

(2) Ten points for applicants who are preference eligibles under section 2108(3)(C)-(G) of that title.

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis

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[1] Part 772 was removed (see 44 FR 44820, July 31, 1979 and 44 FR 46249, Aug. 7, 1979).

of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

(5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218)

[33 FR 12423, Sept. 4, 1968]

§ 337.102 Evaluating qualifications for employees who are in a retained grade.

(a) Employees who are in a retained grade must have the experience they gain subsequent to the downgrading action that placed them in a retained grade considered in the following manner. For placements during the period the employee is in a retained grade, agencies must consider the experience subsequent to the downgrading action to be either:

(1) At the level of the retained grade and in the series of the position which he or she occupied at the time of the downgrading; or

(2) At the grade and in the series of the position to which the employee is downgraded.

(b) Agencies must determine which experience to consider on the basis of which will most likely result in placement. For placements or promotions after the retained grade period, the experience is considered only at the grade level and in the series of the position to which the employee was downgraded.

(5 U.S.C. 5364)

[45 FR 18365, Mar. 21, 1980]

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

Subpart A—Citizenship Requirements

Sec.

338.101 Citizenship.

Subpart B—Members-of-Family Requirement

338.202 Restriction on sons and daughters.

Subparts C-E—[Reserved]

Subpart F—Age Requirements

338.601 Prohibition of maximum-age requirements.

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

EDITORIAL NOTE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—Citizenship Requirements

§ 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a citizen of or owes permanent allegiance to the United States.

(b) A person may be given appointment only if he is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given (1) a limited executive assignment under § 305.509 of this chapter in the absence of qualified citizens or (2) an appointment in rare cases under § 316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

[33 FR 12429, Sept. 4, 1968]

Subpart B—Members-of-Family Requirement

§ 338.202 Restriction on sons and daughters.

(a) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency, or a son or daughter of a member of its uniformed service for student or summer employment within the United States when:

(1) The position is filled from a list of eligibles established under an examination conducted by the Office of Personnel Management and

(2) There is no other available eligible with the same or higher rating, and

(3) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(b) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service for summer employment within the United States when:

(1) The position is filled under agency-developed staffing plans not requiring a summer written test;

(2) The opportunities for employment have been publicized in the summer announcement, OPM regional and/or area office supplements, or through Federal job information centers and State Employment Services for a minimum 2-week period;

(3) There are no eligibles available with the same or higher rating under merit staffing plans for which the ranking criteria satisfy job-relatedness requirements of FPM Supplement 271-2, "Tests and Other Applicant Appraisal Procedures," or for which ranking is not appropriate and qualified candidates are considered on a strictly random basis; and

(4) The appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(c) Paragraphs (a) and (b) of this section do not restrict the appointment of persons:

(1) Who are eligible for placement assistance under the OPM's Displaced Employee (DE) Program, or

(2) Who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or

(3) Who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by the OPM and published in the Federal Personnel Manual.

(d) [Reserved]

(e) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school, as distinguished from a correspondence student.

[44 FR 66573, Nov. 20, 1979 as amended at 53 FR 15354, Apr. 28, 1988]

Subparts C-E—[Reserved]

Subpart F—Age Requirements

§ 338.601 Prohibition of maximum-age requirements.

A maximum-age requirement may not be applied in either competitive or noncompetitive examinations for positions in the competitive service except as provided by:

(a) Section 3307 of title 5, United States Code; or

(b) Pub. L. 93-259 which authorizes OPM to establish a maximum-age requirement after determining that age is an occupational qualification necessary to the performance of the duties of the position.

[40 FR 42734, Sept. 16, 1975]

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

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Subpart B—Physical and Medical Qualifications

339.201 Disqualification by OPM.
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339.206 Disqualification on the basis of medical history.

Subpart C—Medical Examinations

339.301 Authority to require an examination.
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339.303 Examination procedures.
339.304 Payment for examination.
339.305 Records and reports.
339.306 Processing medical eligibility determinations on certificates of eligibles.

AUTHORITY: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

SOURCE: 54 FR 9763, Mar. 8, 1989, unless otherwise noted.

Subpart A—General

§ 339.101 Coverage.

This part applies to all applicants for and employees in competitive service positions; and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, removal of a preference eligible employee in the excepted service under Part 752.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title and corresponding Federal Personnel Manual instructions.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is indicated, as described in §§ 339.103 and 339.204. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary or adverse action.

§ 339.103 Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613. 701 *et seq.* Particularly relevant to medical qualification determinations are § 1613.704 (requiring reasonable accommodation of individuals with handicaps); § 1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and § 1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition, use of the term "qualified" in these regulations shall be interpreted consistently with § 1613.702(f), which provides that a "qualified handicapped person" is a handicapped person "who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others."

§ 339.104 Definitions.

For purposes of this part—

"Accommodation" means "reasonable accommodation" as described in 29 CFR 1613.704.

"Arduous of hazardous positions" means positions that are dangerous or physically demanding to such a degree that an incumbent's medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement from a licensed physician or oher appropriate practitioner which provides information the agency considers necessary to enable it to make a employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical conditions, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clinical status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic of risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, "static or well-stabilized medical condition" means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

"Medical evaluation program" means a program of recurring medical examinations or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands.

"Medical standard" is a written description of the medical requirements for a *particular occupation* based on a determination that a certian level of fitness of health status is required for successful performance.

"Physical requirement" is a written description of job-related physical abilities which are normally considered essential for successful performance in a *specific position*.

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Practitioner" means a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Subpart B—Physical and Medical Qualifications

§ 339.201 Disqualification by OPM.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability nder § 831.502, 844.103, 844.202, or ubpart L of Part 831 of this title, and oes not necessarily entitle the emloyee to disability retirement under ections 8337 or 8451 of title 5, United tates Code.

339.202 Medical standards.

OPM may establish or approve medial standards for a Governmentwide ccupation (i.e., an occupation ommon to more than one agency). An gency may establish medical standrds for positions that predominate in hat agency (i.e., where the agency has 0 percent or more of the positions in particular occupation). Such standrds must be justified on the basis hat the duties of the position are arduous or hazardous, or require a cerain level of health status or fitness ecause the nature of the positions inolve a high degree of responsibility oward the public or sensitive national ecurity concerns. The rationale for stablishing the standard must be documented. Standards established by OPM or an agency must be:

(a) Established by written directive and uniformly applied,

(b) Directly related to the actual requirements of the position, and

(c) Consistent with OPM instructions published in FPM chapter 339.

§ 339.203 Physical requirements.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. The requirements must be clearly supported by the actual duties of the position and documented in the position description.

§ 339.204 Waiver of standards and requirements.

Agencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic examination or immunization programs by written policies or directives to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or incumbents notified in writing of the reasons for including the positions in the program.

§ 339.206 Disqualification on the basis of medical history.

A candidate may not be disqualified for any position solely on the basis of medical history. For positions with medical standards or physical requirements, or positions subject to medical evaluation programs, a history of a particular medical problem may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence cannot medically be ruled out, and the duties of the position are such that a recurrence would pose a reasonable probability of substantial harm.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) A routine preappointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.

(b) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force to undergo a relevant medical evaluation if the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or

(ii) A phychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

§ 339.302 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric evaluation) in any situation where the agency needs additional medical documentation to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering an examination must be documented. An offer of an examination shall be carried out and used in accordance with 29 CFR 1613.706.

§ 339.303 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart, it must inform the applicant or employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.)

(b) The agency designates the examining physician or other appropriate practitioner, but must offer the individual an opportunity to submit medical documentation from his or her personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

§ 339.304 Payment for examination.

Agencies shall pay for all examinations ordered or offered under this subpart, whether conducted by the agency's physician or the applicant's or employee's physician. Applicants and employees must pay for a medical examination conducted by a private physician (or practitioner) where the purpose of the examination is to secure a benefit sought by the applicant or employee.

§ 339.305 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM, under provisions of 5 CFR Part 293, Subpart E.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of Part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information must be forwarded to OPM.

§ 339.306 Processing medical eligibility determinations on certificates of eligibles.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible on a certificate in place of a nonpreference eligible,

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible,

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force, or

(4) Medically disqualify a 30 percent or more disabled veteran for noncompetitive appointment.

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, ON-CALL, AND INTERMITTENT)

Subpart A—Principal Statutory Requirements—Part-Time Employment

Sec.
340.101 Principal statutory requirements.

Subpart B—Regulatory Requirements—Part-Time Employment

340.201 Regulatory requirements.
340.202 General.
340.203 Technical assistance.
340.204 Agency reporting.

Subpart C—[Reserved]

Subpart D—Regulatory Requirements—Seasonal, On-Call, and Intermittent Employment

340.401 Definitions.
340.402 Appropriate use.

AUTHORITY: 5 U.S.C. 3401 et seq., unless otherwise noted.

SOURCE: 44 FR 57380, Oct. 5, 1979, unless otherwise noted.

Subpart A—Principal Statutory Requirements—Part-Time Employment

§ 340.101 Principal statutory requirements.

This subpart incorporates for the benefit of the user of the principal statutory requirements governing part-time career employment, as contained in 5 U.S.C. 3401-3408, and related provisions of Pub. L. 95-437.

SHORT TITLE

SEC. 1. This Act may be cited as the "Federal Employees Part-Time Career Employment Act of 1978".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

(2) part-time permanent employment—

(A) provides older individuals with a gradual transition into retirement;

(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

(C) provides parents opportunities to balance family responsibilities with the need for additional income;

(D) benefits students who must finance their own education or vocational training;

(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

(b) The purpose of this Act is to provide increased part-time career employment opportunities throughout the Federal Government.

"§ 3401. Definitions

"For the purpose of this subchapter—

"(1) 'agency' means—

"(A) an Executive agency;

"(B) a military department;

"(C) an agency in the judicial branch;

"(D) the Library of Congress;

"(E) the Botanic Garden; and

"(F) the Office of the Architect of the Capitol; but does not include—

"(i) a Government controlled corporation;

"(ii) the Tennessee Valley Authority;

"(iii) the Alaska Railroad;

"(iv) the Virgin Island Corporation;

"(v) the Panama Canal Company;

"(vi) the Federal Bureau of Investigation, Department of Justice;

"(vii) the Central Intelligence Agency; and

"(viii) the National Security Agency, Department of Defense; and

"(2) 'part-time career employment' means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

"§ 3402. Establishment of part-time career employment programs

"(a) (1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

"(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

"(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3393 of this title;

"(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

"(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

"(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

"(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

"(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency

"(b) (1) The Civil Service Commission, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this subchapter.

"(2) The Commission shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

"(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

"(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

"(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

"§ 3403. Limitations

"(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

(b) Any person who is employed on a
l-time basis in an agency shall not be re-
red to accept part-time employment as a
dition of continued employment.

3404. Personnel ceilings

In administering any personnel ceiling
licable to an agency (or unit therein), an
ployee employed by such agency on a
t-time career employment basis shall be
nted as a fraction which is determined
dividing 40 hours into the average
nber of hours of such employee's regu-
y scheduled workweek. This section shall
ome effective on October 1, 1980.

3405. Nonapplicability

a) If, on the date of enactment of this
chapter, there is in effect with respect to
itions within an agency a collective-bar-
ning agreement which establishes the
nber of hours of employment a week,
n this subchapter shall not apply to
se positions.

b) This subchapter shall not require
-time career employment in positions
rate of basic pay for which is fixed at a
equal to or greater than the minimum
fixed for GS-16 of the General Sched-

406. Regulations

Before any regulation is prescribed under
subchapter, a copy of the proposed reg
ion shall be published in the FEDERAL
ISTER and an opportunity provided to in-
sted parties to present written comment
where practicable, oral comment. Ini-
regulations shall be prescribed not later
n 180 days after the date of the enact-
t of this subchapter.

407. Reports

a) Each agency shall prepare and trans-
on a biannual basis a report to the
ce of Personnel Management on its ac-
ies under this subchapter, including—

i) details on such agency's progress in
ting part-time career employment goals
blished under section 3392 of this title;

2) an explanation of any impediments
erienced by such agency in meeting such
s or in otherwise carrying out the provi-
s of this subchapter, together with a
ement of the measures taken to over-
e such impediments.

b) The Commission shall include in its
ual report under section 1308 of this
a statement of its activities under this
hapter, and a description and evalua-
of the activities of agencies in carrying
the provisions of this subchapter.

"§ 3408. Employee organization representation

"If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.".

(b) Subpart B of the table of chapters of part III of the analysis of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VII—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

"Sec.
"3401. Definitions.
"3402. Establishment of part-time career employment programs.
"3403. Limitations.
"3404. Personnel ceilings.
"3405. Nonapplicability.
"3406. Regulations.
"3407. Reports.
"3408. Employee organization representation.

SEC. 4. (a) Section 8347(g) of title 5, United States Code, is amended by adding at the end thereof the following: "However, the Commission may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(b) Section 8716(b) of such title 5 is amended—

(1) by striking out of the second sentence "or part-time";

(2) by striking out "or" at the end of clause (1);

(3) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(4) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(c) (1) Section 8913(b) of such title 5 is amended—

(A) by striking out "or" at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following:

"(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3391(2) of this title).".

(2) (A) Section 8906(b) of such title 5 is amended—

(i) by striking out "paragraph (2)" in paragraph (1) and inserting in lieu thereof "paragraphs (2) and (3)"; and

(ii) by adding at the end thereof the following new paragraph:

"(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3391 (2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Commission)".

(B) The amendments made by subparagraph (A) shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis.

SEC. 5. Each report prepared by an agency under section 3397(a) of title 5, United States Code (as added by this Act), shall, to the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D), of section 2(a)(2) of this Act.

[44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984]

Subpart B—Regulatory Requirements—Part-Time Employment

SOURCE: 44 FR 57380, Oct. 5, 1979, as amended at 49 FR 17722, Apr. 25, 1984, unless otherwise noted.

§ 340.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above sections of Chapter 34 (as set out in § 340.101).

§ 340.202 General.

(a) *Definitions.* "Part-time career employment" means regularly scheduled work of from 16 to 32 hours per week performed by an employee of an agency as defined in 5 U.S.C. 3401 (a) through (f), who has an appointment in tenure group I or II and who becomes employed on such part-time basis on or after April 8, 1979.

"Tenure group I" applies to employees in the competitive service under career appointments who are not serving probation and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

"Tenure group II" applies to employees in the competitive service serving probation, career-conditional employees, and career employees in obligated positions. It also includes employees in the excepted service serving trial periods, whose tenure is indefinite solely because they occupy obligated positions; or whose tenure is equivalent to career-conditional in the competitive service.

(b) *Agency Exceptions.* As an exception to the general definition of part-time employment in § 340.202(a) and under the authority provided in 5 U.S.C. 3402(a)(3), an agency may permit an employee who has an appointment in tenure group I or II to perform regularly scheduled work of from 1 to 15 hours per week.

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term "part-time career employment" do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. A mixed tour of duty consists of annually recurring periods of full-time, part-time or intermittent service.

§ 340.203 Technical assistance.

(a) The Office of Personnel Management shall provide, within available resources, consultation and technical advice and assistance to agencies to aid them in expanding career part-time employment opportunities. This assistance shall include but not be limited to:

(1) Help in developing part-time career employment programs;

(2) Information on public and private sector part-time employment practices;

(3) Development of special recruitment and selection techniques for filling part-time positions;

(4) Interpretations of part-time employment law, regulations and policy;

(5) Guidance on job sharing and po-
tion restructuring.

(b) Request for information and as-
stance should be directed to the As-
ciate Director for Staffing Services,
ffice of Personnel Management, 1900
Street, NW., Washington, D.C.
0415, or the nearest OPM regional
ffice.

340.204 **Agency reporting.**

(a) Agency reports required under 5
.S.C. 3407 shall be based on data as
f March 31 and September 30 each
ear and shall be provided to the
ffice of Personnel Management no
ter than May 15 and November 15
espectively.

(b) Each agency shall include with
ich reports a copy of any agencywide
art-time career employment program
egulations and instructions issued
uring the 6-month period preceding
ne report date.

(c) Reports should be sent to the As-
ciate Director for Staffing Services,
ffice of Personnel Management, 1900
Street, NW., Washington, D.C.
0415.

Subpart C—[Reserved]

ubpart D—Regulatory Requirements—Seasonal, On-Call, and Intermittent Employment

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 49 FR 17722, Apr. 25, 1984, unless
therwise noted.

340.401 **Definitions.**

(a) Seasonal employment means an-
ually recurring periods of work of
ess than 12 months each year. Sea-
onal employees are placed in non-
uty/nonpay status and recalled to
uty in accordance with preestab-
shed conditions of employment.

(b) On-call employment means re-
urring periods of work on an as
eeded basis during periods of heavy
orkload with an expected cumulative
ervice period of at least six months in
ay status each year. On-call employ-
es work regularly scheduled tours of
uty while in pay status and are
laced in nonduty/nonpay status and
ecalled to duty in accordance with
preestablished conditions of employment. On-call employees move into the agency's year-round work force as vacancies occur.

(c) Intermittent employment means employment without a regularly scheduled tour of duty.

§ 340.402 **Appropriate use.**

Agencies are authorized to employ seasonal, on-call, and intermittent personnel serving under career or career-conditional appointments in accordance with procedures published in Federal Personnel Manual (FPM) Chapter 340, Other Than Full-Time Career Employment (Part-time, Seasonal, On-Call and Intermittent). Procedures governing employment of individual's appointed under other authorities are contained in other appropriate chapters of the FPM.

PART 351—REDUCTION IN FORCE

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351.202 Coverage.
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351.204 Responsibility of agency.
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Subpart F—Release From Competitive Level

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351.801 Notice period.
351.802 General and specific notices.
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351.804 Notice concerning consideration for reemployment.
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Subpart I—Appeals and Corrective Action

351.901 Appeals.
351.902 Correction by agency.

Subpart J—[Reserved]

AUTHORITY: 5 U.S.C. 1302, 3502, 3503.

SOURCE: 51 FR 319, Jan. 3, 1986, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position die to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges

cept as modified by Part 930 of this apter.

(b) *Employees excluded.* This part es not apply to an employee:

(1) In a position in the Senior Execu- ve Service; or

(2) Whose appointment is required Congress to be confirmed by, or ade with the advice and consent of, e United States Senate, except a stmaster.

(c) *Actions excluded.* This part does t apply to:

(1) The termination of a temporary term promotion or the return of an nployee to the position held before e temporary or term promotion or one of equivalent grade and pay.

(2) A change to lower grade based on e reclassification of an employee's sition due to the application of new assification standards or the correc- on of a classification error.

(3) A change to lower grade based on classification of an employee's posi- on due to erosion of duties, except at this exclusion does not apply to ch reclassification actions that will ke effect after an agency has formal- announced a reduction in force in e employee's competitive area and nen the reduction in force will take fect within 180 days. This exception ds at the completion of the reduc- on in force.

(4) The change of an employee from gular to substitute in the same pay vel in the U.S. Postal Service field rvice.

(5) The release from a competitive vel of a National Guard technician ider section 709 of title 32, United ates Code.

(6) Placement of an employee serv- g on an intermittent, part-time, on- ll, or seasonal basis in a nonpay and nduty status in accordance with nditions established at time of ap- ointment.

351.203 Definitions.

In this part:

"Annual Performance Rating of ecord" means an official perform- ice rating under a performance ap- aisal system approved by OPM in cordance with 5 U.S.C., chapter 43; for an agency not subject to chap- r 43, an official performance rating as provided for in the agency's appraisal system.

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Performance Management and Recognition System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

SOURCE: 52 FR 10024, Mar. 30, 1987, unless otherwise noted.

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing competitive area must use the adverse action procedures found in 5 CFR Part 752 if it chooses to separate an employee who declines to transfer with his or her function.

(e) The losing competitive area may, at its discretion, include employees who decline to transfer with their function as part of a concurrent reduction in force.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if—

(1) The employee performs the function during at least half of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Identification Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of

the number of hours or weeks scheduled to be worked.

(5) *By supervisory or nonsupervisory status.* Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a)(10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(6) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable (Level 1) or equivalent performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable (Level 1) or equivalent performance competes under this part from the position to which he or she will be or has been demoted.

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter).

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a

compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings of record received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) Service credit for employees who do not have three actual annual performance ratings of record during the 3-year period prior to the date of issuance of specific reduction-in-force notices shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one, or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual perfomance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance in the position to which demoted or reassigned.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024, to retention, for 6 months or 1 year after restoration.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

(1) To continue an activity without undue interruption; or

(2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraph (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitation.* An employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating of record no higher than minimally successful (Level 2) or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be

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ed on a comparison of representa-
e rates.

2) Each employee's assignment
nts shall be determined on the basis
the pay rates in effect on the date
issuance of specific reduction-in-
e notices, except that when it is of-
ally known on the date of issuance
notices that new pay rates have
n approved and will become effec-
by the effective date of the reduc-
in force, assignment rights shall
determined on the basis of the new
rates.

.702 Qualifications for assignment.

) Except as provided in § 351.703,
employee is qualified for assign-
t under § 351.701 if the employee:

) Meets the OPM standards and
irements for the position, includ-
any minimum educational require-
t, and any selective placement fac-
established by the agency;

) Is physically qualified, with rea-
ble accommodation where appro-
te, to perform the duties of the po-
n;

) Meets any special qualifying con-
n which the OPM has approved
he position; and

Clearly demonstrates on the
s of overall background, including
ncy of experience, a positive abili-
o successfully perform all critical
ents of the specific position upon
y into it, without undue interrup-
to that activity and without any
of productivity beyond that nor-
y expected in the orientation of
new but fully qualified employee.

The sex of an employee may not
onsidered in determining whether
nployee is qualified for a position,
pt for positions which OPM has
rmined certification of eligibles by
s justified.

An employee who is released
a competitive level during a leave
bsence because of a corpensable
y may not be denied an assign-
right solely because the employ-
not physically qualified for the
s of the position if the physical
alification resulted from the com-
ble injury. Such an employee
be afforded appropriate assign-
rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must sent its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having

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all of the characteristics covered in paragraphs (e)(1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

§ 351.703 Exception to qualifications.

An agency may assign an employee under § 351.201(b) § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) § 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee is subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

i) When an agency retains an em-
yee under § 351.606 or § 351.608,
notice to the employee shall cite
date on which the retention period
s as the effective date of the em-
yee's release from the competitive
l.

1.802 **General and specific notices.**

hen an agency cannot specifically
ermine all individual actions at the
t of the notice period, it may issue
eral notices which shall later be
plemented by specific notices. The
bined general and specific notice
ods shall meet the requirements in
1.801, and the combined contents
he general and specific notices
l meet the requirements in
.803.

803 **Content of notice.**

The notice shall state specifically
ction to be taken and its effective
except as provided in paragraph
f this section; the employee's com-
ive area, competitive level, sub-
o, service date, and annual per-
ance ratings of record received
g the last three years; the place
e the employee may inspect the
ations and records pertinent to
case; the reasons for retaining a
-standing employee in the same
etitive level under § 351.607 or
608; the information on reem-
nent rights except as permitted
51.804; and the employee's right,
plicable, to grieve under a negoti-
grievance procedure or to appeal
e Merit Systems Protection Board
the provisions of the Board's
ations. The agency shall comply
he provisions of § 1201.21 of this

A general notice shall inform the
yee that action under this part
e necessary but a specific action
ot yet been determined. The
shall state that as soon as the
determines what action, if any,
e taken under this part the em-
will receive specific notice of
tion to be taken. The general
shall contain an expiration
A general notice may also in-
other information specified in
aph (a) of this section.

§ 351.804 **Notice concerning consideration for reemployment.**

An employee who receives a specific notice of separation under this part must also be given information concerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 **Expiration of notice.**

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 **New notice required.**

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 **Status during notice period.**

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

[52 FR 46051, Dec. 4, 1987]

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

Subpart J—[Reserved]

PART 352—REEMPLOYMENT RIGHTS

Subpart A—[Reserved]

Subpart B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies

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8 Agency obligation.
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RCE: 33 FR 12433, Sept. 4, 1968, unless wise noted.

TORIAL NOTE: A document published at 47523, Aug. 14, 1979, made general nclature changes to the Office of Per- l Management regulations in this er.

Subpart A—[Reserved]

art B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies

HORITY: 5 U.S.C. 3101 note, 3301, 3131 . 3302; E.O. 10577, 3 CFR 1954-1958 p. 218; sec. 352. 209 also issued under C. 7701, et seq.

201 Letter of Authority.

Definition. A Letter of Authority authorization from OPM to an y appointing officer to grant re- oyment rights.

Scope of authority. A Letter of ority shall specify the conditions r which it may be used, including ypes of positions covered and the izational and geographic areas to it is restricted.

Time limit of authority. A Letter thority shall remain in force for ear from date of issuance unless r revoked by OPM. Renewals or sions will not be issued unless ied by exceptional circumstances.

§ 352.202 Request for Letter of Authority.

When an agency believes that an emergency situation is so critical as to justify offers of reemployment rights, it may request OPM to issue a Letter of Authority. In submitting the request the agency shall present its justification in terms of the standards provided in § 352.203.

§ 352.203 Standards for issuing Letters of Authority.

OPM will determine the standards to be used in issuing Letters of Authority, which shall include the following:

(a) The positions to be filled must be related to emergency situations for which the usual recruiting methods are inadequate.

(b) The positions must be a part of a specific program immediately essential to the national interest.

(c) The positions must be essential to the functioning of the program.

(d) There must be substantial basis for the belief that reemployment rights will be a significant and reasonable aid in meeting the emergency situation.

§ 352.204 Basic eligibility for reemployment rights.

(a) *Employees eligible.* The following employees in the executive branch of the Government are eligible to be granted reemployment rights when they are hired by another executive agency without break in service of a full workday by transfer or reinstatement, or by excepted appointment, in a position which the agency is currently authorized to fill with reemployment rights:

(1) An employee serving in a competitive position under a career or career-conditional appointment;

(2) An employee serving under a career appointment in the Senior Executive Service (SES); or

(3) A nontemporary excepted employee.

(b) *Employees not eligible.* The following employees are not eligible to be granted reemployment rights:

(1) An employee who is serving a probationary or trial period under an appointment to a position in the ex-

cepted or competitive service or the SES.

(2) An employee serving in an obligated position;

(3) An employee serving with reemployment rights granted under this subpart;

(4) An employee who has received a notice of involuntary separation because of reduction in force or otherwise; or

(5) An employee who has already submitted a resignation.

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25187, July 11, 1986]

§ 352.205 Appeal of losing agency.

An appointing officer who intends to employ with reemployment rights an employee of another executive agency shall give the losing agency written notice at least 15 calendar days before the effective date of the proposed action. If the losing agency believes the grant of reemployment rights would be detrimental to the public interest, it may appeal the proposed grant to OPM within 15 calendar days after receipt of the notice. The losing agency, at the same time, shall furnish a copy of the appeal to the prospective appointing officer, who shall withhold the proposed grant pending decision on the appeal. OPM shall determine whether the employee will be given reemployment rights and notify both agencies accordingly. If the losing agency does not appeal within 15 calendar days, the employee shall be granted reemployment rights.

§ 352.205a Authority to return employee to his or her former or successor agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency without regard to Part 351, 752, or 771 of this chapter when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and geographical area as the position he or she last held in the former or successor agency; and

(b) At not less than the rate of pay he or she would have been receiving in the position last held in the former or successor agency if he or she had not been transferred.

[51 FR 25187, July 11, 1986]

§ 352.205b Authority to return an SES employee to his or her former or successor agency.

The transfer of a career SES appointee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position in the SES for which the employee is qualified; and

(b) At not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

[51 FR 25187, July 11, 1986]

§ 352.206 Expiration of reemployment rights.

Reemployment rights granted under a Letter of Authority expire at the end of 2 years following the date of the personnel action, unless exercised or otherwise terminated before that time, except that the reemployment rights of an employee serving outside the continental United States extend for an additional period of 3 months.

§ 352.207 Exercise or termination of reemployment rights.

(a) *Exercise.* The time limits for application for reemployment under this subpart are:

(1) Within 30 calendar days before the expiration of the term of reemployment rights;

(2) Within 30 calendar days after receipt of notice of involuntary separation;

(3) At least 30 calendar days in advance of the person's scheduled entry into active military duty. In this case he shall be reemployed and separated, furloughed, or granted leave of ab-

ce for military service by the reem-
ying agency; or
) At any time before the expira-
n of the term of reemployment
nts with the written consent of the
rent employing agency if applica-
n for reemployment is made within
days after date of separation, or
er receipt of advance notice of pro-
ed demotion by the current em-
ying agency.

) *Termination.* An employee's re-
ployment rights terminate if:
) He fails to apply within the time
its stated in paragraph (a) of this
tion;
) He resigns without the written
sent of the current employing
ncy; or
) Within 10 calendar days, he fails
accept an offer of reemployment
de under § 352.208 which is deter-
ned to be a proper offer of reem-
yment by the reemploying agency
by the Merit Systems Protection
rd on appeal.

2.208 Agency's obligation to reemploy.

) *Employee's right to reemploy-*
nt. An employee is entitled to be re-
ployed by the reemploying agency
promptly as possible but not more
n 30 calendar days after receipt of
application. Except as provided in
agraph (c) of this section, the em-
yee is entitled to reemployment in
occupational field and at the same
de or level and in the same geo-
phical area as the position which
employee last held in that agency.
he reemployment would cause the
aration or demotion of another em-
yee, the applicant shall then be
sidered an employee for the pur-
e of applying the reduction-in-force
ulations (5 CFR Part 351) to deter-
e to what, if any, position, he or
is entitled.

) *Reemployment in a higher grade.*
reemploying agency may reem-
the employee in a position of
her grade than that to which he is
tled, but not if this reemployment
ld cause the displacement of an-
er employee.

) *Reemployment in SES.* When the
loyee's right is to a position in the
, reemployment or return may be
to any position in the SES for which the employee is qualified.

(d) *Seniority in postal service.* On reemployment in the postal service, the employee is entitled to the seniority he would have attained had he remained in the postal service.

(e) *Basis for agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was last separated for serious cause evidencing his unsuitability for reemployment.

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25187, July 11, 1986]

§ 352.209 Employee appeals to the Merit Systems Protection Board.

When an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform him or her of that denial by a written notice. In the same notice, the agency shall inform him/her of his/her right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

[44 FR 48952, Aug. 21, 1979]

Subpart C—Detail and Transfer of Federal Employees to International Organizations

AUTHORITY: 5 U.S.C. 3584, E.O. 11552, 3 CFR 1966-1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, et seq.

SOURCE: 35 FR 16525, Oct. 23, 1970, unless otherwise noted.

§ 352.301 Purpose.

The purpose of this subpart is to encourage details and transfers of employees for service with international organizations as authorized by sections 3343 and 3581-3584 of title 5, United States Code, and to provide procedures for participation in the program.

§ 352.302 Definitions.

In this subpart:

(a) "Agency," "employee," "international organization," and "transfer" have the meaning given them by section 3581 of title 5, United States Code;

(b) "Detail" has the meaning given it by section 3343 of title 5, United States Code; and

(c) "Term of employment" means not more than (1) 5 consecutive years of employment, except that when the Secretary of State determines it to be in the national interest, the detail or transfer may be extended up to an additional 3 years, or (2) the period of less than 5 years specified at the time of consent to transfer or detail, beginning with entrance on duty in the international organization.

§ 352.303 Effective date of equalization allowance.

Section 352.310 applies to employment with an international organization that occurs after December 29, 1969.

§ 352.304 International organizations covered.

Without prior approval of OPM, an agency may detail or transfer an employee under this subpart to any organization which OPM has designated in the Federal Personnel Manual as an international organization. An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission, only when OPM, after consultation with the Department of State, agrees that the organization concerned could be designated in the Federal Personnel Manual as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

§ 352.305 Eligibility for detail.

An employee, including a person serving under a career appointment in the Senior Executive Service (SES), is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

[51 FR 25188, July 11, 1986]

§ 352.306 Length of details.

A detail or series of details shall not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5-year detail may be extended for up to an additional 3 years. A detail or series of details or combination of details and transfers shall not exceed 8 years in the aggregate.

§ 352.307 Eligibility for transfer.

An employee is eligible for transfer to an international organization with the rights provided for in, and in accordance with, sections 3581-3584 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, a Foreign Service officer or a Foreign Service information officer), regardless of whether his appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of Part 213 of this chapter, or in a position authorized to be filled by noncareer executive assignment or limited executive assignment under Part 305 of this chapter.

(c) A person serving under a noncareer, limited emergency, or limited term appointment in the SES.

(d) A person serving under a temporary appointment pending establishment of a register.

(e) A person serving under an appointment specifically limited to 1 year or less.

(f) A person serving on a seasonal, intermittent, or part-time basis.

[35 FR 16525, Oct. 23, 1970, as amended at 51 FR 25188, July 11, 1986]

§ 352.308 Effecting employment by transfer.

(a) *Authority to approve transfers.* On written request by an international organization for the services of an employee, the agency may authorize the transfer of the employee to the organization for any period not to exceed 5 years, except that when the Secretary

State determines it to be in the na-
al interest, a period of employ-
nt by transfer may be extended,
ject to the approval of the head of
agency, for up to an additional 3
rs. A transfer or series of transfers
ombination of details and transfers
ll not exceed 8 years in the aggre-
e. Refusal by the head of the
ncy to authorize the transfer or
extension of the transfer is not re-
vable by or appealable to OPM.

) *Letter of consent.* When an
ncy consents to the transfer of an
oloyee, the agency shall give its
sent in writing to the international
anization and shall furnish the em-
yee with a copy of the consent.

) *Effective date.* The agency and
international organization shall es-
lish the effective date of transfer
nutual agreement.

) *Recording requirement.* The
ncy shall furnish the employee
a statement of his leave account
n he is separated for transfer. In
ition, the agency shall include on
personnel action form effecting
employee's separation for transfer,
identification of the international
anization to which he transfers, (2)
ear statement of the period during
ch he has reemployment rights in
agency under section 3582 of title
Jnited States Code, and this sub-
, and of the legal and regulatory
ditions of his reemployment.

2.309 Retirement, health benefits, and group life insurance.

) *Agency and employee action.* At
time of consent to the transfer of
employee, the agency shall notify
employee in writing that it will
e agency contributions and he will
in coverage with resulting rights
benefits under the retirement,
lth benefits, and group life insur-
e systems or any of them if em-
yee payments are currently depos-
in the respective funds. The em-
yee shall acknowledge, in writing,
ipt of the notice and state wheth-
r not he wishes to retain his cover-
under the retirement, health bene-
, and group life insurance systems
ny of them by continuing required
ployee payments.

(b) *Agency responsibility.* A transferred employee is deemed to remain an employee of the agency from which transferred for retirement, health benefits, and group life insurance purposes. For retirement and group life insurance purposes, the agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency shall furnish the employee with specific information as to how, when, and where the payments are to be submitted.

(c) *Coverage.* Employee payments are currently deposited if received by the agency before, during, or within 3 months after the end of the pay period covered thereby. Failure to deposit the payment currently terminates a transferred employee's retirement, health benefits, and group life insurance coverage on the last day of the pay period for which payments were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in Parts 870 and 890 of this chapter and to the conversion benefits provided in Parts 870 and 890 of this chapter. Coverage so terminated may not attach again before the employee actually enters on duty on his first day in a pay status in an agency. However, terminated civil service retirement, health benefits, and group life insurance coverage shall be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity. Coverage under a system other than the civil service retirement system shall be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 Equalization allowance.

(a) An employee transferred to an international organization is entitled to be paid in accordance with paragraphs (a)(1) through (4) of this section, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organizations and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of title 5, United States Code, (i) on reemployment; or (ii) on his death which occurs during the period of transfer or during the period after separation from an international organization when he is exercising or could exercise his reemployment rights.

(1) To determine the difference, the Department of State defines pay (i) for the Federal Government, as the amount paid an employee before the deduction of State and local taxes, but after the deduction of hypothetical U.S. Federal tax using the standard deduction considering the number of exemptions and appropriate tax table prescribed by the Department; (ii) for international organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies, as the amount actually paid to the employee after the deduction of the Staff Assessment; (iii) for other international organizations, as the amount actually paid to the employee. In cases where pay is subject to State and local taxes, this shall be the pay before the deduction of the taxes.

(2) Allowances, post differential, and other monetary benefits are defined by the Secretary of State as follows:

(i) *Federal Government:* The amount that would have been paid under sections 5921-5925 of title 5, United States Code, applicable provisions of chapters 100, 200, and 500 of the Standardized Regulations (Government Civilians Foreign Areas) and implementing agency regulations had the employee been detailed to the international organization under section 3343 of title 5, United States Code;

(ii) International organizations following the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent provisions of the Staff Regulations and Rules of the United Nations and the Specialized Agencies;

(iii) Other international organizations not under the Common System of Salaries and Allowances of the United Nations and Specialized Agencies: The amount paid under pertinent conditions of service applied by the organizations as determined to be appropriate by the releasing agency with the concurrence of the Secretary of State.

(3) Travel and subsistence expenses, transportation of effects, and leave are not considered monetary benefits for purposes of this section.

(4) In exceptional circumstances where a hardship or an inequity would otherwise occur the Secretary of State, on the recommendation of the head of the agency, may specify allowances or other monetary benefits in lieu of or in addition to those specified above.

(b) Authoritative information on pay, allowances, post differential, and other monetary benefits as defined in paragraph (a) of this section for the Federal Government and the international organizations is maintained currently by the Department of State and is made available on request to any Federal department, agency, or employee concerned.

(c) Agency and employee responsibilities for reporting and documenting payments received from international organizations are specified in the Federal Personnel Manual.

[35 FR 16525, Oct. 23, 1970, as amended at 40 FR 1223, Jan. 7, 1975]

§ 352.311 Reemployment.

(a) A transferred employee is entitled to be reemployed in his or her former position or one of like seniority, status, and pay within 30 days of

or her application for reemploy-
t if he or she meets the following
itions:
He or she is separated, either vol-
rily or involuntarily, within his or
erm of employment with an inter-
nal organization; and
He or she applies for reemploy-
t to his or her former agency or
uccessor no later than 90 days
his or her separation.
When an employee's right is to a
ion in the SES, reemployment or
n may be to any position in the
for which the employee is quali-
The employee shall be returned
t less than the SES pay level at
h the employee was being paid
ediately before his or her trans-

R 25188, July 11, 1986]

312 When to apply.

employee may apply for reem-
ment either before or after sepa-
n by the international organiza-
If he applies before separation,
30-day period prescribed in
.311 begins either within the date
e application or 30 days before
employee's date of separation,
hever is later.

**313 Failure to reemploy and right of
ppeal.**

When an agency fails to reem-
an employee within 30 days of
her application, it shall notify
/her in writing of the reasons and
s/her right to appeal to the Merit
ems Protection Board under the
isions of the Board's regulations.
agency shall comply with the pro-
ns of § 1201.21 of this title.
If the agency fails to reach and
a decision to the employee
in 30 days from his/her applica-
for reemployment, the employee
titled to appeal the failure of the
cy to the Merit Systems Protec-
Board under the provisions of the
d's regulations.
An appeal alleging that the
cy has failed to comply with any
he other provisions of sections
and 3581-3584 of title 5, United
es Code, or of this part may be
nitted to the Merit Systems Pro-

tection Board under the provisions of the Board's regulations.

[44 FR 48952, Aug. 21, 1979]

§ 352.314 Consideration for promotion.

(a) Each agency shall consider each employee detailed or transferred to an international organization for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) When the position of an employee absent on detail or transfer to an international organization is regraded upward during his absence, his agency shall place him in the regraded position.

Subpart D—Employment of Presidential Appointees and Elected Officers by the International Atomic Energy Agency

AUTHORITY: Sec. 6(c), 71 Stat. 455; 22 U.S.C. 2025(c); E.O. 10774, 3 CFR, 1954-1958 Comp., p. 418, as amended by E.O. 10804, 3 CFR, 1959-1963 Comp., p. 328.

§ 352.401 Purpose.

The purpose of this subpart is to implement section 6(b) of the International Atomic Energy Agency Participation Act of 1957 and Executive Order 10774 as amended by Executive Order 10804 to protect the civil service rights and privileges, wherever appropriate, of Presidential appointees and elected officers who leave their positions and within 90 days enter employment with the International Atomic Energy Agency.

§ 352.402 Coverage.

This subpart applies to all officers, as defined in § 352.403(b), of any branch of the Federal Government.

§ 352.403 Definitions.

In this subpart:

(a) "Agency" means the International Atomic Energy Agency;

(b) "Officer" means any Presidential appointee or elected officer who leaves his position after August 27, 1957, and within 90 days enters employment with the agency; and

(c) "Term of employment" means not more than 3 consecutive years of employment beginning with entrance on duty in the agency.

§ 352.404 Retirement and insurance.

(a) *Coverage.* (1) To obtain retirement benefits for a term of employment with the agency, an officer covered by subchapter III of chapter 83 of title 5 United States Code, within 90 days after the date he is separated from the agency, shall pay to OPM all necessary employee deductions and agency contributions for coverage under that subchapter for his term of employment with the agency. Interest shall not be charged an officer on any payment of necessary employee deductions and agency contributions. The amount of the employee deductions so paid shall be added to the officer's lump-sum credit in the Civil Service Retirement and Disability Fund.

(2) To retain coverage under chapter 87 of title 5, United States Code, during his term of employment with the agency, an officer covered by that chapter shall currently pay employee deductions and agency contributions necessary for coverage under that chapter for his term of employment with the agency. Collections may be made under procedures which may be determined in accordance with written agreements reached between accounting representatives of OPM and the agency.

(3) All retirement and insurance benefits and obligations shall be computed in the same manner as if the rate of basic pay the officer was receiving on the last day he was in his Federal position before employment with the agency had continued without change.

(4) An officer not covered by either subchapter III of chapter 83, or chapter 87, of title 5, United States Code, in the Federal position which he last held or from which he separates to enter employment with the agency does not acquire coverage or benefits under these statutes based on employment with the agency.

(b) *Death coverage.* An officer who dies during his term of employment or within 90 days of his separation therefrom is deemed to have died in the Federal Service.

§ 352.405 Resumption of Federal service.

(a) *Pay increase.* Except for an employee whose right is to a position in the Senior Executive Service (SES), an officer who is reemployed in the Federal position which he or she left or one of like seniority, status, and pay within 90 days of his or her separation from the agency following a term of employment, is entitled to the rate of basic pay to which he/she would have been entitled had he or she remained in the Federal service. When the employee's right is to a position in the SES, this subpart authorizes reemployment to any position in the SES for which the employee is qualified at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

(b) *Sick leave account.* An officer shall have any sick leave account which he may have had in his last Federal position reestablished for credit or charge, if he returns to an appropriate leave system within 52 calendar weeks after the date he is separated from his term of employment with the agency.

(c) *Service credit for agency employment.* An officer who is reemployed in the Federal service within 90 days after completion of his term of employment with the agency is entitled to credit as Federal service for his term of employment with the agency. However, OPM shall give service credit for subchapter III of chapter 83 of title 5, United States Code, purposes only if the officer complies with the requirements of § 352.404(a)(1).

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25188, July 11, 1986]

Subpart E—Reinstatement Rights After Service Under Section 233(d) and 625(b) of the Foreign Assistance Act of 1961

AUTHORITY: Sec. 625, 75 Stat. 449; 22 U.S.C. 2385; E.O. 10973; 3 CFR 1959-1963 Comp., p. 493; Section 352.508 also issued under 5 U.S.C. 7701 et seq.

§ 352.501 Purpose.

This subpart governs reinstatement authorized by sections 233(d) and 625(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2193(d) and 22 U.S.C. sec. 235(b)).

[36 FR 13897, July 28, 1971]

§ 352.502 Coverage.

This subpart applies to any of the following serving in a position in the Federal Government:

(a) A person serving in the competitive service under a career or career-conditional appointment.

(b) A person serving under a career appointment in the Senior Executive Service (SES).

(c) A person serving in the excepted service under an appointment without a specific time limitation.

(d) A person appointed or assigned under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.).

[33 FR 12433, Sept. 4, 1968, as amended at 51 FR 25188, July 11, 1986]

§ 352.503 Definitions.

In this subpart:

(a) "Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C. sec. 2151 et seq.); and

(b) "Former position" means the position that an employee was occupying at the time of his appointment to a position under authority of section 233(d) or section 625(b) of the Act.

[36 FR 13897, July 28, 1971]

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his or her own misconduct or delinquency, to be reinstated in his or her former position or in one of like seniority, status, and pay in the same agency. When the employee's right is to a position in the SES, reinstatement may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer. If the functions with which the employee's former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

[51 FR 25188, July 11, 1986]

§ 352.505 Proposed termination.

At least 45 days before termination of the appointment of an employee entitled to reinstatement, the agency terminating the employee shall notify the employee and his former agency in writing of the proposed termination. However, notification under this section is not required when:

(a) The termination is at the employee's own request; or

(b) The employee is reinstated without a break in service under an arrangement made between the agencies concerned.

§ 352.506 Application for reinstatement.

An employee who desires reinstatement shall apply for reinstatement, in writing, no later than 30 days after his appointment under authority of section 233(d) or section 625(b) of the Act is terminated, unless arrangement has been made for his reinstatement without a break in service under § 352.505(b).

[36 FR 13897, July 28, 1971]

§ 352.507 Reinstatement.

An employee eligible for reinstatement is entitled to be reinstated as soon as possible after his application for reinstatement, filed in accordance with § 352.506, is received. In any event, he is entitled to be reinstated (a) within 30 days after his application for reinstatement is received, or (b) on termination of the appointment made under authority of section 233(d) or section 625(b) of the act, whichever is later.

[36 FR 13897, July 28, 1971]

§ 352.508 Appeals to the Merit Systems Protection Board.

(a) If an agency determines that an employee who has applied for reinstatement is not eligible for reinstatement, it shall notify the employee as promptly as possible of its decision, of the basis therefor, and of the employee's appeal rights under this subpart. The employee is entitled to appeal the decision to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If an agency fails to reinstate an employee within the time limits specified in § 352.507, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) If an employee considers that his reinstatement is not in accordance with the act and this subpart, he or she is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

[44 FR 48952, Aug. 21, 1979]

Subpart F—[Reserved]

Subpart G—Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations

AUTHORITY: Sec. 105(i), Pub. L. 93-638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899; 41 FR 3459; Section 352.707 also issued under 5 U.S.C. 7701, et seq.

SOURCE: 41 FR 27713, July 6, 1976, unless otherwise noted.

§ 352.701 Purpose.

This subpart governs reemployment rights authorized by section 105(i) of the Indian Self-Determination Act (88 Stat. 2210; Pub. L. 93-638, the Act) and E.O. 11899 after service in an Indian tribal organization under the Act.

§ 352.702 Definitions.

In this subpart:

(a) "Agency" means the Bureau of Indian Affairs and the Indian Health Service. For reemployment purposes, the Public Health Service shall be considered the agency to which Indian Health Service employees may return.

(b) "Competitive area" is the same as defined in § 351.402 of this title.

(c) "Tribal organization" is defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204).

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health Service, as appropriate, if they leave their Federal employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a function of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

(1) An employee serving in a competitive position under a career or career-conditional appointment and who has satisfactorily completed at least 6 months of a probationary period; or

(2) A non-temporary excepted service employee who has satisfactorily completed at least 6 months of a trial period if one is required by the agency.

(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

(b) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to contracting under the Act to a tribal organization;

(2) An employee whose resignation has been accepted for reasons other than to accept tribal employment under this subpart; or

An employee serving under a
dule C excepted appointment or a
areer executive assignment.

Not related to other benefits. En-
nent to reemployment rights does
epend on continuation of Federal
oyee benefits coverage during
e with a tribal organization.

R 27713, July 6, 1976, as amended at 51
188, July 11, 1986]

**704 Duration of reemployment
ghts.**

Termination of authority. Rights
ot granted to persons who leave
ral employment for employment
a tribal organization after the
(December 31, 1985, at present)
fied in section 105(e) of the
n Self-Determination Act (88
2209).

Maximum period of entitlement.
lement to reemployment termi-
at the end of 6 years following
date employment commences in
tribal organization unless exer-
or otherwise terminated before
time as provided in this subpart.

705 Return to Federal employment.

Conditions. Reemployment
s may be exercised only under
ollowing conditions. The individ-
must apply in writing to the
er employing agency for reem-
nent not later than 30 calendar
after:

Receipt of notice of involuntary
ation from tribal employment.
his purpose, involuntary separa-
neans any separation against the
nd without consent of the indi-
l.

Reversion of the function to Fed-
operation, whether reversion is
gh tribal or Federal action; or

Separation with the joint consent
e tribal organization and the Fed-
agency for reasons of personal
hip or other special circum-
es.

Termination. A former employ-
ntitlement to reemployment ter-
es for:

Failure to apply for reemploy-
within the time limit stated in
raph (a) of this section;

Resignation from tribal service
ut the joint consent, described in paragraph (a)(3) of this section, of the tribal organization and the Federal employer; or

(3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment made under § 352.706 which is determined by the employing agency or by the Merit Systems Protection Board on appeal to be a proper offer of reemployment.

§ 352.706 Agency response to reemployment application.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of application.

(1) Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving the agency;

(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a)(1) (i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.

(2) *Extending the area.* Responsibility for reemploying an applicant is nation-wide within the agency. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the employee's availability, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the pur-

pose of applying the reduction-in-force regulations.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(2) of this section, an employee who cannot be placed under paragraph (a)(1) of this section, in the competitive area at the same grade or level as the position last held is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination, and available, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Reemployment to an SES position.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

(e) *Basis for agency refusal to reemploy.* An agency may refuse to reemploy when the employee was last separated from tribal employment for serious cause establishing unsuitability for reemployment.

(f) *Basis for agency inability to reemploy.* An agency may find it is unable to reemploy in the event no position can be found under procedures in this section.

[41 FR 27713, July 6, 1976, as amended at 51 FR 25188, July 11, 1986]

§ 352.707 Employee appeals to the Merit Systems Protection Board.

(a) If an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform the individual of that denial and of the reasons therefor by a written notice. In the same notice, the agency shall inform the employee of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) If an employee considers reemployment to be not in accordance with this subpart, the employee is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) Refusal of a tribe to hire a Federal employee is not appealable to the Merit Systems Protection Board.

[44 FR 48953, Aug. 21, 1979]

Subpart H—Reemployment Rights Under the Taiwan Relations Act

AUTHORITY: 22 U.S.C. 3310; E.O. 12143, 44 FR 37191; Section 352.807 also issued under 22 U.S.C. 3310; E.O. 12143, 45 FR 37452.

SOURCE: 46 FR 8433, Jan. 27, 1981, unless otherwise noted.

§ 352.801 Purpose.

This subpart governs reemployment rights authorized by section 11(a) (1) and (2) of the Taiwan Relations Act (Pub. L. 96-8) after service in the American Institute in Taiwan (AIT) under the Act.

§ 352.802 Definitions.

For the purposes of this subpart:

Act refers to Taiwan Relations Act (Pub. L. 96-8).

Competitive area is the same as defined in section 351.402 of this title;

Institute means the American Institute in Taiwan.

Specified period of service shall be a period of not more than 6 years.

§ 352.803 Basic entitlement to reemployment rights on leaving Federal employment.

(a) This subpart applies to all executive agencies as defined in section 105 of title 5, United States Code, the U.S. Postal Service, the Postal Rate Commission, and to the employees thereof, and to those positions in the competi-

ve civil service and the employees oc-
ipying those positions.

(b) The agency must give employees
titled to reemployment rights under
is subpart written notice of these
ghts at the time of their separation.

(c) *Employees entitled.* The follow-
g employees or former employees
e granted reemployment rights sub-
ct to the conditions of this subpart,
they leave their Federal employ-
ent to be employed (on the date of
corporation of AIT or within 30 cal-
idar days following separation from
eir agency) by the Institute for a
ecified period of service.

(1) An employee serving in a com-
titive position under a career or
reer-conditional appointment;

(2) A non-temporary excepted serv-
e employee;

(3) An employee serving under a
reer appointment in the Senior Ex-
utive Service; or

(4) An employee serving in a career
ecutive assignment under Part 305
this chapter.

(d) *Employees not entitled.* The fol-
wing employees are not entitled to
employment rights under this sub-
rt:

(1) An employee who has received a
tice of involuntary separation be-
use of reduction in force, or other
use, not directly related to employ-
ent with the Institute under the Act;

(2) An employee whose resignation
s been accepted for reasons other
an to accept employment with the
stitute under this subpart.

(3) An employee serving under a
hedule C excepted appointment.

(4) An employee serving in a limited
ecutive assignment or a noncareer
ecutive assignment under Part 305
this chapter; or

(5) An employee serving under a
ncareer, limited emergency, or limit-
term appointment in the Senior Ex-
utive Service.

52.804 Maximum period of entitlement to reemployment.

Entitlement to reemployment termi-
tes at the end of 6 years and 30
ys, following the date employment
mmences in the Institute unless ex-
cised or otherwise terminated before
at time as provided in this subpart.

§ 352.805 Position to which entitled on reemployment.

(a) *Basic position entitlement.* (1) On reemployment, an employee is entitled to be appointed to a position in the employee's former or successor agency in the following order:

(i) To the position last held in the former agency:

(A) If that position has been identified for transfer to a different agency, reemployment rights must be exercised with the gaining agency.

(B) If that position has been reclassified, the employee should be placed in the reclassified position;

(ii) A position in the same competitive level; or

(iii) Another position for which otherwise qualified at the same grade or level and in the same competitive area.

(2) *The employing agency determines under paragraph (a)(1) of this section the position to which the employee is entitled.* Reduction-in-force procedures shall be applied when necessary in determining the position to which the employee has a right. In applying reduction-in-force procedures, the applicant shall be considered an employee of the agency.

(3) *Extending the area.* Responsibility for reemploying an applicant is agencywide. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the agency's need, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force procedures.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(3) of this section, an employee who cannot be placed under paragraph (a)(1) of this section in the same competitive area at the grade or level as the position last held, is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination and need, outside the organizational or geographic area of entitlement, either at the appropriate grade or at a grade other than the one to which entitled.

(d) *Basic position entitlement in the Senior Executive Service.* (1) On reemployment, an employee (who meets the requirements to § 352.803(c)(3)) is entitled to be given a career appointment in the Senior Executive Service the employee's former or successor agency.

(2) The employee may be assigned to any position in the Senior Executive Service for which he/she meets the qualifications requirements.

(3) The employee may elect to accept reemployment in a position outside the Senior Executive Service. Such placement would be subject to the provisions of paragraphs (b) and (c) of this section.

§ 352.806 Return to Federal employment.

(a) *Conditions:* Reemployment rights may be exercised only under the following conditions. The employees must apply in writing to their former or successor agency:

(1) No less that 30 calendar days before completion of the specified period of service with the Institute; or

(2) No more than 30 calendar days after involuntary separation from the Institute; or

(3) No more than 30 calendar days after separation based on personal hardship or other special circumstances with the consent of Institute and former employing agency.

(b) An agency must act on the former employee's request for reemployment within 30 calendar days of receipt thereof, i.e., the agency must provide the employee with a written notice stating the agency's decision whether to reemploy and the position being offered, if the employee is to be reemployed.

(c) *Termination of reemployment rights.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply, except for good cause shown, for reemployment within the time limits stated in paragraph (a) of this section;

(2) Resignation from the Institute without the consent of the Institute or the former employing agency; or

(3) Failure to accept, within 15 workdays of receipt thereof, an offer of reemployment under § 352.803 which is determined to be a proper offer of reemployment by the employing agency and by Merit Systems Protection Board (MSPB), if appealed.

§ 352.807 Appeals.

An employee may appeal to MSPB, under the provisions of the Board's regulations, an agency's decision on his or her request for reemployment which he or she believes is in violation of this subpart.

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

AUTHORITY: Pub. L. 96-70, 22 U.S.C. 3643.

SOURCE: 50 FR 13963, Apr. 9, 1985, unless otherwise noted.

§ 352.901 Purpose.

This subpart implements section 1203 of the Panama Canal Act of 1979, which provides for the detail or transfer of Federal employees to the Panama Canal Commission with reemployment rights in the former agency.

§ 352.902 Definitions.

In this subpart—

Act means the Panama Canal Act of 1979 (22 U.S.C. 3601 *et seq.*).

Agency means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

Commission means the Panama Canal Commission as established by section 1101 of the Act.

Competitive area is defined in § 351.402 of Part 351 of this chapter.

Competitive level is defined in § 351.403(a) of Part 351 of this chapter.

Detail is the assignment of loan of an employee to the Commission without the employee's transfer. The employee remains an employee of the agency in which employed and continues to be the incumbent of the position from which detailed.

Term of employment means the period of employment specified in the written agreement between the Commission and the agency for the transfer of an employee or extension of transfer.

Transfer means the change in appointment of an employee from an agency to a new appointment with the Commission.

§ 352.903 Effecting a detail or transfer.

(a) *Authority to approve.* The head of an agency may enter into written agreements with the Commission for the detail or voluntary transfer, for set periods of time, of agency employees to the Commission in accordance with section 3643 of title 22, United States Code, and this subpart. Refusal by the head of the agency to agree to a detail or transfer, or extension of detail or transfer, is not reviewable by the Office of Personnel Management or appealable.

(b) *Employee notice.* The agency will furnish the employee with a copy of the written agreement which must contain a statement of the time limits for exercising reemployment rights and the conditions of reemployment.

§ 352.904 Eligibility.

This subpart covers only eligible employees transferred or detailed to Commission positions with duty stations in the Republic of Panama.

(a) *Employees eligible.* Except as provided in paragraph (b) of this section, an employee serving in a position in an agency under any of the following appointments may be granted rights under this subpart:

(1) Career or career-conditional appointment in the competitive service;

(2) An appointment without a specific time limit in the excepted service; or

(3) A career appointment in the Senior Executive Service.

(b) *Employee not eligible.* The following employees are not eligible under this subpart:

(1) An employee who is serving a trial period or probationary period under an initial appointment;

(2) An employee who has received a proposed notice of involuntary separation (e.g., separation based on reduction in force, adverse action, or performance);

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of Part 213 of this chapter, in a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter, or under Presidential appointment; or

(4) An employee whose resignation has been accepted for reasons other than to accept employment with the Commission.

§ 352.905 Employees on detail.

(a) An employee detailed to the Commission is subject to the same conditions of employment at his or her employing agency as if the employee has not been detailed.

(b) The Commission and the employing agency will arrange for the termination of a detail and the agency will return the employee to his or her former position or an equivalent one as provided in § 352.908 (b) and (c).

§ 352.906 Termination of transfer.

At the conclusion of a term of employment agreed upon as provided in § 352.903, employment with the Commission may be terminated without regard to Parts 351, 359, 432, 752, or 771 of this chapter.

§ 352.907 Exercise or termination of reemployment rights.

(a) *Exercise.* An individual who has been transferred under this subpart to the Commission and wishes to be reemployed must apply in writing to the former employing agency. The time limits for application for reemployment are—

(1) No later than 30 calendar days after the expiration of the term of employment with the Commission;

(2) No later than 30 calendar days after receipt of notice of involuntary separation during the term of employment with the Commission; or

(3) No later than 30 calendar days after resignation with the consent of the Commission.

(b) *Termination.* Reemployment rights terminate if the individual—

(1) Fails to apply within the time limits stated in paragraph (a) of this section;

(2) Resigns without the written consent of the Commission; or

(3) Within 10 calendar days, fails to accept an offer of reemployment made under § 352.908 that is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.908 Agency obligation.

(a) *Time limits.* An employee is to be reemployed by the reemploying agency as promptly as possible, but not later than 30 calendar days after receipt of the reemployment application or on termination of the term of employment with the Commission, whichever is later.

(b) *Conditions.* An employee will be reemployed or returned from detail without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had he or she not been transferred or detailed. An employee in the Senior Executive Service will be reemployed or returned at not less than the rate at which paid immediately before the transfer or detail. An employee who is reemployed is not eligible for grade or pay retention under Part 536 of this chapter based on a grade or rate of pay attained while employed by the Commission.

(c) *Position to which entitled.*

(1) If the function with which the employee's former position was identified has been transferred, the employee's right is to a position in the gaining agency or activity.

(2) An employee whose right is to a position in the Senior Executive Service may be reemployed in or returned to any Senior Executive Service position in the former agency for which qualified.

(3) All other employees are entitled to be reemployed in or returned to a position at the same grade or level and in the same competitive area as the position last held in the former agency. If the reemployment would cause the separation or demotion of another employee, the applicant should be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled. If the employee is not placed at the former grade or level, the agency must extend consideration beyond the competitive area. Responsibility for reemployment is agency-wide.

(4) Reemployment may be at a higher grade than that to which the employee is entitled if all appropriate standards and requirements are satisfied and if this will not cause the displacement of another employee.

(5) The reemployment obligation may be satisfied by placement in any position within the agency that is acceptable to the employee.

(d) *Agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was separated from the Commission for serious cause showing unsuitability for reemployment.

§ 352.909 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency must notify the applicant in writing of that denial and its reasons. In the same notice, the agency will inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it will advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit overed by a negotiated grievance procedure that does not exclude this atter must use the negotiated grievnce procedure.

(3) An employee to whom paragraph)(2) of this section does not apply is ntitled to appeal to the Merit Sysems Protection Board under the prosions of the Board's regulations. The gency must comply with the provions of § 1201.21 of this title.

ART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

Subpart A—General Provisions

ec.

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3.104 Notification of rights and obligations.
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Subpart D—Appeals

3.401 Appeals to the Merit Systems Protection Board.

AUTHORITY: 38 U.S.C. 2021, et seq., and 5 S.C. 8151.

SOURCE: 40 FR 23836, June 3, 1975, unless herwise noted.

Subpart A—General Provisions

53.101 Scope.

The rights and obligations of emoyees and agencies in connection ith leaves of absence or restoration duty following military service under 38 U.S.C. 2021, et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part and to corresponding material published in Chapter 353 of the Federal Personnel Manual.

[53 FR 858, Jan. 14, 1988]

§ 353.102 Definitions.

In this part:

Agency means (1) with respect to restoration following a compensable injury, any department, independent estalishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and (2) with respect to restoration following military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military duty means a period of (1) active duty for training or for service in the Armed Forces of the United States; (2) inactive duty training in the Armed Forces of the United States; and (3) active duty in the Public Health Service that is covered by 38 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. Inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training in the Armed Forces of the United States.

[40 FR 23836, June 3, 1975, as amended at 43 FR 2379, Jan. 17, 1978; 53 FR 858, Jan. 14, 1988]

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment without time limitation in a position outside the competitive service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.305 covers the restoration rights of employees serving under temporary appointments pending establishment of register (TAPER).

[40 FR 23836, June 3, 1975, as amended at 53 FR 859, Jan. 14, 1988]

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by Chapter 43 of Title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

[53 FR 859, Jan. 14, 1988]

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

[40 FR 23836, June 3, 1975. Redesignated at 53 FR 859, Jan. 14, 1988]

Subpart B—Agency Action in Employee's Absence

§ 353.201 Personnel actions.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or military duty can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of injury or military duty shall be considered for that position in accordance with the provisions in Part 335 of this chapter.

(c) An employee with restoration rights, absent on military duty, may not be demoted or separated (other than military separation). If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay.

(d) An employee absent because of compensable injury is subject to the same terms and conditions of employment with respect to demotion, separation, reduction in force (RIF), etc., as though he or she had not been injured. An employee who receives compensation during a period of LWOP or separation not due to compensable

njury (e.g., expiration of appointment
r RIF) or during a period when he or
he would not normally be expected to
vork (e.g., seasonal employment) is
ot entitled to any greater rights or
enefits than he or she would have re-
eived if not entitled to workers' com-
ensation.

53 FR 859, Jan. 14, 1988]

353.202 Transfer of function to another agency.

If the function with which an em-
loyee absent because of injury or
ilitary duty was associated at the
ime of his departure, is transferred to
nother agency and if the employee
ould have been transferred with the
unction under Part 351 of this chap-
er if he were not absent, the gaining
gency shall retain the employee in
is position or assign him to a position
f like seniority, status, and pay. It
hall also assume the obligation to re-
tore the employee in accordance with
w and this part.

353.203 OPM placement assistance.

OPM will provide placement assist-
nce to employees returning from
ilitary duty or compensable injury
hen the employing agency has been
bolished and its functions were not
ansferred to another agency. Upon
equest, OPM will also provide place-
ent assistance to an employee re-
urning from military duty when it is
ot possible for the employing agency
restore the individual.

3 FR 859, Jan. 14, 1988]

Subpart C—Agency Obligation To Restore

353.301 Military returnees and injured employees who recover within 1 year.

The following individuals are enti-
ed to mandatory restoration to their
rmer positions or equivalent ones.

(a) An individual returning from
ilitary duty who is entitled to resto-
tion rights under 38 U.S.C. 2021 or
024 (a), (b), or (c). This eligible indi-
dual must be restored as soon as pos-
ble after making application but in
event later than 30 days after the
plication is received by the agency.

(b) An individual who fully recovers from a compensable injury within 1 year of the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the employee resumes regular employment with the United States. Such an individual must be restored immediately and unconditionally.

[53 FR 859, Jan. 14, 1988]

§ 353.302 Physical disqualification.

An individual who is physically disqualified for the former position or equivalent because of disability sustained during military service or because of compensable injury shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. For an employee who sustains a compensable injury, this right applies for a period of 1 year from the date compensation begins.

[53 FR 859, Jan. 14, 1988]

§ 353.303 Injured employees who take longer than 1 year to recover.

An employee who was separated because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. (See Parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.)

[43 FR 2379, Jan. 17, 1978. Redesignated at 53 FR 859, Jan. 14, 1988]

§ 353.304 Partially recovered injured employees.

Agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who has partially recovered from a compensable injury and who is able to return to limited duty.

[44 FR 56683, Oct. 2, 1979. Redesignated at 53 FR 859, Jan. 14, 1988]

§ 353.305 Restoration rights of TAPER employees.

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in grade GS-16, GS-17, or GS-18), is entitled to be restored to the position he or she left, or an equivalent position in the same commuting area.

[53 FR 859, Jan. 14, 1988]

§ 353.306 Leaves of absence.

Documentation, reporting, and other requirements relating to leaves of absence shall be specified from time to time in the FPM System. The following employees are entitled under Title 38 of the U.S. Code, to a leave of absence in connection with military duty.

(a) A member of a Reserve component who performs active duty for training or inactive duty (38 U.S.C. 2024(d)).

(b) An employee who reports for enlistment, induction, or physical examination (38 U.S.C. 2024(e)).

[53 FR 859, Jan. 14, 1988]

Subpart D—Appeals

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided below, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore or improper restoration. All appeals are to be submitted in accordance with the MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in Parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

[53 FR 860, Jan. 14, 1988]

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

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Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

359.901 Coverage.
359.902 Conditions of removal.

AUTHORITY: 5 U.S.C. 1302 and 3596, unless otherwise noted.

SOURCE: 54 FR 18876, May 3, 1989, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter V of chapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

§ 359.202 Definitions.

Agency, Senior Executive Service position, senior executive, career appointee, limited emergency appointee, limited term appointee, and *noncareer appointee,* are defined in 5 U.S.C. 3132(a).

Probation and *probationary period* mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

Reemployed annitant means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

§ 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542; or

(b) The appointee is a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

§ 359.402 Removal: Unacceptable performance.

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period for unacceptable performance.

(b) *Basis for action.* A removal under this section need not be based upon a final rating under the agency's SES performance appraisal system established under Subpart C of Part 430 of this chapter. Even if a removal is based on such a rating, the removal action is taken under this section.

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency's conclusions as to the inadequacies of the appointee's performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

§ 359.403 Removal: Conduct.

(a) *Coverage.* (1) This section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply, however, when the appointee was covered under 5 U.S.C. 7511 immediately

before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the basis for the removal action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and

(2) Show the effective date of the action.

§ 359.404 Removal: Conditions arising before appointment.

(a) *Coverage.* (1) This section covers the removal of a career appointee from the SES during the probationary period when the action is based in whole or in part on conditions arising before the appointment.

(2) This section does not apply, however, when the career appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case, the removal is subject to the provisions of Part 752, Subpart F, of this chapter.

(b) *Procedures.* (1) The agency shall give the appointee an advance written notice stating the specific reasons for the proposed removal.

(2) The appointee shall be given a reasonable time to reply.

(3) The agency shall give the appointee a written decision showing the reasons for the action and the effective date. The decision shall be given to the appointee at or before the time the action will be made effective.

§ 359.405 Removal: Reduction in force.

(a) *Coverage.* This section covers the removal of a career appointee from the SES during the probationary period under a reduction in force.

(b) *Basis for Action.* The appointee must have been identified for removal from the SES under competitive procedures established by the agency in accordance with the requirements of 5 U.S.C. 3595(a). Removal action shall be taken under 5 U.S.C. 3592(a).

(c) *Procedures.* The agency shall notify the appointee in writing before the effective date of the action. The notice shall state, as a minimum—

(1) Whether the appointee has placement rights under § 359.701 to a position outside the SES and, if so, the position to which the appointee will be assigned;

(2) The effective date of the action;

(3) The appointee's appeal rights, including the time limit for appeal and the location of the Merit System Protection Board office to which an appeal should be sent; and

(4) Such other information as may be required by OPM.

§ 359.406 Restrictions.

(a) Removal from the SES under §§ 359.402 through 359.404 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) The restrictions in paragraph (a) of this section do not apply—

(1) When the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(2) To a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee;

(3) To a disciplinary action when there is a reasonable cause to believe that the career appointee has commit-

ted a crime for which a sentence of imprisonment can be imposed; or

(4) To a disciplinary action when the circumstances are such that retention of the career appointee—

(i) May pose a threat to the appointee or others;

(ii) May result in loss of or damage to Government property; or

(iii) May otherwise jeopardize legitimate Government interests.

(d) The following procedures must be observed when an agency invokes an exception to the 120-day restriction under paragraphs (c)(3) or (c)(4) of this section:

(1) The agency shall include in the notice the reasons for invoking the exception.

(2) The appointee shall be given a reasonable time, but no less than 7 days, to respond regarding the propriety of the use of the exception.

(3) The agency shall give the appointee a notice of decision on the propriety of the use of the exception at or before the time the action will be effective.

(4) When circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time as necessary to effect the action.

(e) The imposition of the 120-day moratorium does not extend the probationary period.

§ 359.407 Appeals.

(a) Removal under § 359.402, 359.403, or 359.404 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) Removal under § 359.405 is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701 as to whether the reduction in force complies with the competitive procedures required under 5 U.S.C. 3595(a).

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 General.

(a) *Coverage.* (1) This subpart covers—

(i) A career appointee who has completed the probationary period in the SES; and

(ii) A career appointee who is not required to serve a probationary period in the SES.

(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See Subpart I of this part for removal of a reemployed annuitant.

(b) *Definitions.* (1) "Final rating" means the rating of record made by an appointing authority under the SES performance appraisal system in accordance with the requirements of 5 U.S.C. 4314(c)(3) and Part 430, Subpart C, of this chapter.

(2) A "less than fully successful" final rating means a rating of unsatisfactory or minimally satisfactory.

(c) *Optional removal from the SES.* The agency may remove a career appointee from the SES after the appointee has been given one final rating of unsatisfactory.

(d) *Mandatory removal from the SES.* The agency must remove a career appointee from the SES after—

(1) The appointee has been given two final ratings of unsatisfactory within 5 consecutive years; or

(2) The appointee has been given two final ratings of less than fully successful within 3 consecutive years.

§ 359.502 Procedures.

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under Subpart G of this part—the position to which the appointee will be assigned shall be identified either in this advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the removal action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h) or 8414(a).

(b) *Informal hearing.* (1) A career appointee being removed from the

SES under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Board. See 5 CFR 1201.141, Right to hearing, and 5 CFR 1201.142, Hearing procedures; referral of the record.

(2) Neither the granting nor the conduct of an informal hearing shall provide a basis for appeal to the Merit Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed because of the granting of an informal hearing.

§ 359.503 Restrictions.

(a) Removal from the SES under this subpart may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

(c) This restriction does not apply when the career appointee has received a final rating of unsatisfactory under the performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code, before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor who has the authority to remove the career appointee.

§ 359.504 Appeals.

An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

Subpart F—Removal of Career Appointees as a Result of Reduction in Force

§ 359.601 General.

(a) *Coverage.* (1) This subpart covers the removal of a career appointee from the SES as a result of a reduction in force.

(2) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See Subpart I of this part for removal of a reemployed annuitant.

(b) *Definitions* (1) "Probationary period" is defined in § 359.202 of this part.

(2) "Reduction in force" is defined in 5 U.S.C. 3595(d) as including "the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor."

(c) *Agency procedures.* An agency must have issued written procedures before conducting a reduction in force. A copy of the procedures shall be provided OPM upon issuance.

§ 359.602 Agency reductions in force.

(a) *Competitive procedures.* (1) This paragraph applies to all SES career appointees in the agency, including appointees serving a probationary period.

(2) An agency shall establish competitive procedures in writing to determine who will be removed from the SES in any reduction in force of career appointees within the agency. Such competitive procedures shall be based primarily on performance.

(3) An appointee who has completed the probationary period must be retained over an appointee who has not completed the probationary period if they both have the same retention standing.

(b) *Placement within the agency.* (1) This paragraph applies to any SES

eer appointee who has completed
probationary period, or was not re-
red to serve a probationary period,
who has been identified for reduc-
in force under paragraph (a) of
s section.

2) The appointee is entitled to be
ered any vacant SES position in the
ncy for which the appointee meets
qualifications requirements. If
re is more than one vacancy, the
ncy has the option of which posi-
to offer the appointee.

3) An appointee covered by this
agraph is entitled to be placed in a
ant SES position over an appointee
is still serving a probationary
iod.

9.603 OPM priority placement.

) *Agency certification.* (1) If there
o vacant SES position within the
ncy for which an appointee covered
§ 359.602(b) is qualified, the agency
d, or the acting agency head in the
ence of the agency head, shall cer-
to OPM in writing that no such
ition is available This certification
not be delegated below the
ncy head level.

) The 45-day period during which
M will attempt to place the ap-
ntee begins on the day the certifi-
on is akcnowledged by OPM.

) It is the continuing responsibility
n agency that has a surplus career
ointee to place the appointee in
vacant SES position in the agency
which the appointee is qualified,
n after the appointee is certified to
M.

) *OPM authority.* As provided by
S.C. 3595(b)(3), OPM may require
agency to take any action that
M considers necessary to carry out
acement.

) *OPM referrals.* (1) OPM may for-
ly refer a career appointee to an
ncy for a specific SES vacancy or
eral priority consideration. Such a
rral may not become a part of the
ilar competitive staffing process.
appointee must be considered by
agency for a noncompetitive SES
ointment.

) Any objection by the agency to
qualifications of the appointee
t be based on the professional/
nical qualifications in the standard for the position. An agency may not rely solely on lack of agency-specific experience for an objection based on lack of professional/technical qualifications if the appointee is otherwise qualified.

(d) *Agency response.* (1) In order to expedite placement of surplus career appointees, an agency shall respond to an OPM referral within the time period prescribed by OPM.

(2) If an agency fails to place a referred career appointee in an SES position because of objection to the appointee's qualifications or because of any other reason, the agency response must be in writing and must be signed by the agency head, or the acting agency head in the absence of the agency head. The response may not be delegated below the agency head level.

(e) *Corrective action.* If an agency fails to provide bona fide priority consideration, OPM may order appropriate corrective action.

(f) *Declination by employee.* A career appointee who declines a reasonable offer of placement may be removed from the SES.

§ 359.604 Removal from the SES and placement rights outside the SES.

(a) If a probationary appointee is identified for reduction in force under § 359.602(a), removal action is taken under § 359.405. Placement rights outside the SES are covered under subpart G of this part.

(b) If a career appointee who has completed the probationary period, or who did not have to serve one, is identified for reduction in force under § 359.602(a) and is not placed elsewhere in the SES under § 359.602(b) or § 359.603, or declines a placement offer under § 359.603, removal action is taken under § 359.604(b). Placement rights outside the SES are covered under subpart G of this part.

§ 359.605 Notice requirements.

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal.

(b) The notice shall state, as a minimum—

(1) The action to be taken and its prospective effective date;

(2) The place where the appointee may inspect the regulations and records pertinent to the action;

(3) Placement right within the agency and through OPM;

(4) The appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent; and

(5) Such other information as may be required by OPM.

§ 359.606 Appeals.

A career appointee may appeal to the Merit Systems Protection Board whether the reduction in force complies with the competitive procedures in § 359.602(a).

§ 359.607 Records.

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

§ 359.608 Transfer of function.

(a) "Transfer of function" means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

Subpart G—Guaranteed Placement

§ 359.701 Coverage.

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES under any of the following conditions:

(a) Removal during the probationary period under Subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or Part 752, Subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenture, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under Part 213 of this chapter;

(2) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(3) To a position that meets the same criteria as a Schedule C position or a position authorized to be filled by noncareer executive assignment; or

(4) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) Removal for less than fully successful executive performance under Subpart E of this part if the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

(c) Removal as the result of a reduction in force under Subpart F of this part is the appointee has completed the required probationary period under the SES or was not required to serve a probationary period.

§ 359.702 Placement rights.

(a) An appointee covered by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS-15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the apointment held at the time of appoint- ent to the SES. This tenure require- ent does not apply—

(1) If the agency taking the removal tion does not have a position of uivalent tenure for which the ap- ointee meets the qualifications re- uirements; or

(2) If the appointee is willing to cept a position having a different nure.

359.703 Responsibility for placement.

The agency taking the removal tion is responsible for placing the pointee in an appropriate position ithin the agency, or for arranging a ansfer to an appropriate position in nother agency. Any transfer must be utually acceptable to the appointee d the gaining agency.

359.704 Restrictions.

Placement of an appointee under is subpart shall not cause the sepa- tion or reduction in grade of any her employee.

359.705 Pay.

(a) An appointee placed under this bpart is entitled to receive basic pay the highest of—

(1) The rate of basic pay in effect for e position in which the appointee is ing placed;

(2) The rate of basic pay currently in fect for the position that the ap- ointee held in the civil service imme- ately before being appointed to the ES; or

(3) The rate of basic pay in effect for e appointee immediately before re- oval from the SES.

(b) An employee receiving basic pay der paragraph (a)(2) or (a)(3) of is section shall have future pay ad- sted in accordance with 5 U.S.C. 94(c)(2).

ubpart H—Furloughs in the Senior Executive Service

AUTHORITY: 5 U.S.C. 3133 and 3136.

SOURCE: 48 FR 11925, Mar. 2, 1983, unless herwise noted.

59.801 Agency authority.

This subpart sets the conditions der which an agency may furlough career appointees in the Senior Executive Service. The furlough of a noncareer, limited term, or limited emergency appointee is not subject to this subpart. The furlough of a reemployed annuitant holding a career appointment also is not subject to the subpart.

§ 359.802 Definitions.

For the purpose of this subpart, "furlough" means the placing of an appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

§ 359.803 Competition.

Any furlough for more than 30 calendar days shall be made under competitive procedures established by the agency. The procedures shall be made known to the SES members in the agency.

§ 359.804 Length of furlough.

A furlough may not extend more than one year. It may be made only when the agency intends to recall the appointee within one year.

§ 359.805 Appeals.

A career appointee who has been furloughed and who believes this subpart or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

§ 359.806 Notice.

(a) An appointee is entitled to a 30 days' advance written notice of a furlough. The full notice period may be shortened, or waived, only in the event of unforseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

(b) The written notice shall advise the appointee of:

(1) The reason for the agency decision to take the furlough action.

(2) The expected duration of the furlough and the effective dates;

(3) The basis for selecting the appointee for furlough when some but not all Senior Executive Service ap-

pointees in a given organizational unit are being furloughed;

(4) The reason if the notice period is less than 30 days;

(5) The place where the appointee may inspect the regulations and records pertinent to the action; and

(6) The appointee's appeal rights, including the time limit for the appeal and the location of the Merit Systems Protection Board office to which the appeal should be sent.

§ 359.807 Records.

The agency shall preserve all records relating to an action under this subpart for at least one year from the effective date of the action.

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

§ 359.901 Coverage.

(a) This subpart covers the removal from the SES of—

(1) A noncareer appointee;

(2) A limited emergency or a limited term appointee; and

(3) A reemployed annuitant holding any type of appointment under the SES.

(b) Coverage does not include, however, a limited emergency or a limited term appointee who is being removed for disciplinary reasons and who is covered by 5 CFR 752.601(c)(2).

§ 359.902 Conditions of removal.

(a) *Authority.* The agency may remove an appointee subject to this subpart at any time.

(b) *Notice.* The agency shall notify the appointee in writing before the effective date of the removal.

(c) *Placement rights.* An appointee covered by this subpart is not entitled to the placement rights provided for career appointees under Subpart G of this part.

(d) *Appeals.* Actions taken under this subpart are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

PART 410—TRAINING

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ıbpart I—Reports and Interchange of Training Information

10.901 Reports.
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AUTHORITY: 5 U.S.C. 4101, *et seq.*; E.O. 1348, 3 CFR, 1967 Comp., p. 275. § 410.503 lso issued under 5 U.S.C. 5364. § 410.506 nd § 410.602 also issued under 5 U.S.C. 104. § 410.902 also issued under 42 U.S.C. 746.

SOURCE: 33 FR 16431, Nov. 9, 1968; 34 FR 479, Feb. 21, 1969, unless otherwise noted.

Subpart A—General Provisions

410.101 Definitions.

In this part:

(a) "Government," "agency," "em- loyee," "training," "Government fa- lity," and "non-Government facility" ave the meanings given to these erms by section 4101 of title 5, United tates Code.

(b) "Training by, in, or through Gov- nment facilities" means training hat is conducted (1) by civilian or ilitary personnel of the Government cting in their official capacities, and) on property owned or substantially ontrolled by the Government. All ther training is "training by, in, or rough non-Government facilities."

(c) "Interagency training" means aining provided by one agency for ther agencies or shared by two or ore agencies.

(d) "State" and "local government" ave the meanings given to these rms by section 4762 of title 42, nited States Code.

3 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. , 1969, as amended at 36 FR 13201, July , 1971]

Subpart B—Determining Training Needs

§ 410.201 Review of training needs.

(a) In conducting the reviews of training needs required by section 4113 of title 5, United States Code, and by Executive Order 11348, an agency shall consider periodically, but not less often than annually:

(1) Its program to identify training needed to bring about more effective performance at the least possible cost;

(2) Training needs of individual employees as related to the program objectives of the agency; and

(3) Its short- and long-range program needs by occupations, organizations, or other appropriate groups.

(b) Reviews shall be conducted in such manner as the agency finds best to meet the requirements of chapter 41 of title 5, United States Code, Executive Order 11348, and this part, and to provide sound bases for planning the training to be provided thereunder.

Subpart C—Establishing Training Programs

§ 410.301 Scope and general conduct of training programs.

(a) The head of an agency shall determine the policies which are to govern the training of employees of the agency. These policies shall be set forth in writing and include a statement of the broad purposes for which training will be given and of the assignment of responsibilities for seeing that these purposes are achieved.

(b) The head of an agency also shall take such administrative action as is necessary to assure that:

(1) Plans and programs are developed to meet the short- and long-range training needs of the agency;

(2) Priorities are established for the training programs of the agency;

(3) Provision is made for the use of funds and staff hours in accordance with established priorities, for the training programs of the agency;

(4) Employee self-development is fostered through a work environment in which self-development is encouraged, self-study materials are reason-

ably available, and self-initiated improvement in performance is recognized; and

(5) Information with respect to the general conduct of the training program of the agency is available to enable the Office, the President, and Congress to discharge their respective responsibilities under chapter 41 of title 5, United States Code.

(c) Training programs established by the agencies under chapter 41 of title 5, United States Code, to the maximum extent feasible:

(1) Be based on short- or long-range needs, existing or reasonably foreseeable;

(2) Meet as many of these needs as possible, priority considered;

(3) Use work assignment flexibility to provide experience to promote employee growth for the purpose of increasing the quality and quantity of work produced; and

(4) Be integrated with other personnel management and operating activities.

(d) As provided in subsection (b) of section 4103 of title 5, United States Code, an agency may train any employee of the agency to prepare the employee for placement in another agency when the following conditions are met:

(1) The head of the agency must determine that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of title 5, United States Code;

(2) Before undertaking any training under this section, the head of the agency shall obtain verification from the Office that there exists a reasonable expectation of placement in another agency;

(3) In selecting an employee for training under this section, the head of the agency shall consider:

(i) The extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(ii) The employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(iii) The benefits to the Government which would result from retaining the employee in the Federal service.

[44 FR 44814, July 31, 1979]

§ 410.302 Selection and assignment of trainees.

(a)(1) Except as provided by paragraph (a)(2) of this section, an agency must follow its merit promotion procedures when selecting a career or career-conditional employee for training which is: (i) Part of an authorized training agreement; (ii) part of a promotion program; or (iii) required before an employee may be considered for a promotion.

(2) Paragraph (a)(1) of this section does not apply if (i) the agency's merit promotion procedures have already been applied or (ii) the training is associated with a promotion not covered by those procedures.

(b) With respect to selection and assignment of employees to training by, in, or through non-Government facilities, the head of an agency shall provide that each assignment of an employee who is stationed within the continental limits of the United States to training outside these limits be approved by a specifically designated official at the headquarters level of the agency.

(c) The head of an agency shall prescribe such procedures as are necessary to assure that the selection of employees for training is made without regard to race, color, religion, sex, national origin, age, or other factors unrelated to the need for training.

[47 FR 935, Jan. 8, 1982]

§ 410.303 Utilization of trainees.

An agency, in effecting position changes, shall consider significant training and self-development activities undertaken by employees.

§ 410.304 Evaluation of training.

An agency shall evaluate the results and effects of training under chapter 41 of title 5, United States Code. This evaluation shall be conducted in such manner and with such frequency as the agency head considers appropriate.

Subpart D—Interagency Training

§ 410.401 Establishment and utilization of interagency training.

(a) An Agency shall extend training programs developed for its own employees to employees of other agencies (and to employees of Federal organizations excepted by section 4102 of title 5, United States Code) when this would result in better training, improved service, or savings to the Government.

(b) An agency shall assign its employees to available interagency training when this would result in better training, improved service, or savings to the Government.

Subpart E—Training Through Non-Government Facilities

§ 410.501 Determining the source of training.

If adequate training is reasonably available from a Government facility to meet an agency's need, it shall use that facility. If adequate training is not reasonably available from a Government facility, the agency shall use a non-Government facility. The head of an agency will determine that adequate training is not reasonably available within the Government when either of the following conditions is met:

(a) There is no training within the agency, and reasonable inquiry has failed to disclose training elsewhere in the Government (in another agency or an interagency training facility), which would be available and adequately meet its need; or

(b) Adequate training available within the Government would be more expensive, because of the costs of distance, time, or other factors, than training available from non-Government facilities which would adequately meet the need.

[54 FR 23631, June 2, 1989]

§ 410.502 Selection of non-Government facilities for training.

(a) An agency shall use as the principal criterion for selection of non-Government training facilities the ability of the facilities to meet the training needs of the agency effectively, economically, and in timely fashion.

(b) An agency shall not allow training in a non-Government facility that discriminates because of race, color, religion, or national origin in the admission or in the subsequent treatment of students.

§ 410.503 General prohibitions, training through non-Government facilities.

(a) An agency may not authorize the training of an employee through a non-Government facility for the purpose of making a promotion if another employee within the agency is:

(1) Equal in ability and suitability;

(2) Fully qualified to fill the position; and

(3) Available within a reasonable distance from the position location.

(b) To assure adherence to the constraint of paragraph (a) of this section, the agency head shall establish policies and procedures he or she considers reasonable and necessary relating to areas of consideration and to determinations concerning:

(1) Ability;

(2) Suitability;

(3) Availability;

(4) Qualifications; and

(5) Geographic location.

(c) An exception to the constraint of paragraph (a) of this section, is granted for training an employee under the authority of 5 U.S.C. 5364.

(d) An exception to 5 U.S.C. 4107(c)(1) is provided to employees trained under the authority of 5 U.S.C. 5364 if:

(1) The career ladder of the new occupation does not provide a greater potential for promotion than the occupation from which the employee was downgraded; and

(2) The new position is at or below the employee's retained grade.

(e) When training by, in, or through a non-Government facility exceeds 120 hours in a single program, or is used to prepare an employee for a different occupational series, the head of the agency must determine, before authorizing the training, that the functions for which the training would be needed cannot be assumed by other employees.

50-004 O—91——8

[45 FR 18365, Mar. 21, 1980, as amended at 47 FR 935, Jan. 8, 1982]

§ 410.504 Prohibiton of training through non-Government facilities advocating overthrow of the Government by force or violence.

The head of the agency shall make the determination that payments for training by, in, or through a non-Government facility are not in violation of section 4107(a) (1) and (2) of Title 5, United States Code.

[45 FR 51755, Aug. 5, 1980]

§ 410.505 Continuous civilian service.

For the purpose of applying section 4106(a) (2) and (3) of title 5, United States Code, continuous civilian service includes periods of service in a nonpay status.

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) The head of an agency may waive the limitation in section 4106(a)(1) of title 5, United States Code, if it is in the public interest because the training from non-Government facilities is the only available training or is as effective as, and less costly than, training available from Government facilities.

(b) Subject to chapter 41 of title 5, United States Code, and this part, an employee having less than one year of current, continuous civilian service in the Government is eligible for training by, in, or through non-Government facilities on a finding by the head of his or her agency that postponement of the training until the employee has completed one year of current, continuous civilian service in the Government would be contrary to the public interest.

(c) The head of an agency may waive the limitations in section 4106(a) (1) and (3) of title 5, United States Code, for:

(1) An employee assigned to training by, in, or through a non-Government facility that does not exceed 40 hours within a single program;

(2) An employee receiving training provided by a manufacturer as a part of the normal service incident to initial purchase or lease of its products under procurement contract; and

(3) An employee receiving training through a correspondence course.

(d) The head of an agency may waive the limitation in section 4106(a)(3) of title 5, United States Code for individual employees when the following conditions are met:

(1) The employee is serving under a career or career-conditional appointment or an appointment without time limitation in the excepted service;

(2) The training would not cause the total amount of the employee's training through non-Government facilities in the current decade of service to exceed two years; and

(3) A record of use of the authority is to be inserted in the employee's Official Personnel Folder, showing:

(i) A description of the training in terms of its substance (e.g., hydrology), level (e.g., graduate), and facility to be used;

(ii) The amount of training through non-Government facilities already received in the employee's current decade of service which counts toward the limitation;

(iii) The period for which the waiver is required (specifying month and year in which it is to begin and end);

(iv) If the training is primarily for application to a future assignment, a description of its major duties;

(v) The projected beginning of the employee's next decade of service; and

(vi) A statement of that agency's reasons for believing that application of the limitation would be contrary to the public interest, including a description of the effect of postponement of the training's completion until the next decade of service.

(e) The head of an agency may waive the limitation in section 4106(a)(3) of title 5, United States Code, for an employee serving in a career-related work-study program when all of the following conditions are met:

(1) The employee is serving under a Schedule B appointment which allows the agency to carry the employee on its rolls during the non-work periods of the program and adequate opportunity for the employee to fulfill the obligation to continue in the service of

the agency as required by section 4108 of title 5, United States Code;

(2) Graduate education shall not be covered by the waiver;

(3) The employee's expenses of college training that are being paid are limited to the expenses covered by section 4109(a)(2) of title 5, United States Code; and

(4) Information is recorded in the employee's Official Personnel Folder, recording the waiver, the nature of the program (e.g., Federal Junior Fellowship), and the length of training encompassed by the program.

[44 FR 55133, Sept. 25, 1979, as amended at 45 FR 48098, July 18, 1980; 54 FR 23632, June 2, 1989]

§ 410.507 Computing time in training through non-Government facilities.

For the purpose of chapter 41 of title 5, United States Code, and this part:

(a) An employee assigned to full-time training by, in, or through a non-Government facility is counted as being in training the same number of hours he is in a pay status during the training assignment, up to a maximum of 8 hours a day or 40 hours a week. If the employee is not in pay status during the training, he is counted as being in training the same number of hours as are in the period of any leave granted for the purpose of the training.

(b) An employee assigned to training by, in, or through a non-Government facility on less than a full-time basis is counted as being in training the same number of hours he spends in class or with the instructor in the facility.

(c) OPM may authorize such other procedures for the counting of the time in training as it considers appropriate.

§ 410.508 Agreements to continue in service.

(a) For the purpose of administering section 4108 of title 5, United States Code:

(1) There must be a written continued service agreement before assignment to training by, in, or through a non-Government facility unless the training meets the conditions of paragraph (b) or (c) of this section;

(2) The time the employee must agree to serve must be at least three times the length of the training period in non-Government facilities except as provided in paragraph (d) of this section;

(3) The period of time an employee is required to agree to continue in the service of the agency begins on the first workday after the end of the training covered by the agreement and does not include any service in nonpay status except for service in nonpay status which is at the agency's convenience; and

(4) "Additional expenses incurred by the Government in connection with his training" means expenses of training paid under section 4109(a)(2) of title 5, United States Code, but not salary, pay, or compensation.

(b) An employee selected for training by, in, or through a non-Government facility that involves no expense to the Government other than his or her pay is excepted from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement.

(c) The head of the agency may except from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement:

(1) An employee selected for training not in excess of 80 hours (short-term training) provided by a manufacturer as a part of the normal service incident to initial purchase or lease of a product under a procurement contract;

(2) An employee selected for training by, in, or through a non-Government facility that does not exceed 80 hours within a single program; and

(3) An employee selected for training which is given through a correspondence course.

(d) When an agency pays only the expenses of an employee's training that are authorized by section 4109(a)(2) of title 5, United States Code, the head of the agency may reduce to 1 month or to a period equal to the length of the training period covered by the payment, whichever is greater, the period of time the employee is required by section 4108(a) of title 5, United States Code, to agree to continue in the service of his or her agency.

[48 FR 29669, June 28, 1983]

§ 410.509 Failure to fulfill agreements to continue in service.

(a)(1) Each written agreement required under section 4108(a) of title 5, United States Code, shall specify that the employee must repay the additional expenses if he or she voluntarily separates from the Government. The percentage of the additional expenses to be repayed may not exceed the proportion of the agreement not completed. The agency shall provide procedures to enable the employee to obtain a reconsideration of the amount to be recovered or to appeal for a waiver of the agency's right to recover.

(2) Except as provided in paragraph (a)(3) of this section, when the employing agency receives a request for transfer to another Government agency of an employee subject to an agreement, it will notify the gaining agency that the employee is still subject to a continued service agreement and transfer the agreement to the gaining agency. The gaining agency must then assure that the agreement is fulfilled.

(3) If the employing agency finds that the employee would not use the training in the new position, it must give the employee notification before the effective date of the transfer of its intention to recover the additional expenses. The agency must provide an opportunity for the employee to respond to the agency findings that he or she would not use the training in the new position before it can proceed to recover the appropriate amount of training expenses. The percentage of the additional expenses recovered cannot exceed the proportion of the agreement not completed. The completion of recovery relieves the employee of the obligation to continue in the service of the Government.

(b) The head of an agency, or a representative especially designated by him or her for this purpose, must provide procedures for an employee's response to an agency request for repayment of the additional expenses and for an employee's appeal for a waiver of the agency's right of recovery under section 4108(c) of title 5, United States Code, before the agency can recover the appropriate payment and may waive, in whole or in part, the right of the agency to recover when he or she finds that:

(1) The employee has completed most, but not all, of the required period of service;

(2) The employee resigned because of his or her own illness or the serious illness of a member of his or her immediate family; or

(3) The employee is unable to make payment because of severe financial hardship.

[48 FR 29669, June 28, 1983]

§ 410.510 Exceptions to the constraints on the usage of non-Government training.

When training meets two of the following conditions, then the agency is excepted from counting the time spent in such training toward the constraints in 5 U.S.C. 4106(a)(1), 5 U.S.C. 4106(a)(2) and 5 U.S.C. 4106(a)(3) and from the requirement in 5 U.S.C. 4108(a):

(a) Conducted by civilian or military personnel of the Government acting in their official capacities; or

(b) Held on property owned or substantially controlled by (rented by or loaned to) the Government; or

(c) Controlled by the government in terms of general level, coverage, content and requirements for participation.

[45 FR 40963, June 17, 1980]

Subpart F—Payment of Training Expenses

§ 410.601 Determination of necessary expenses of training.

The head of an agency shall determine which expenses constitute necessary training expenses under section 4109 of title 5, United States Code.

§ 410.602 Prohibition on payment of premium pay.

(a) Except as provided by paragraph (b) of this section, no funds appropriated or otherwise available to an agency may be used for the payment of premium pay to an employee engaged in training by, in, or through Government facilities or non-government facilities.

(b) The following are excepted from the provision in paragraph (a) of this section prohibiting the payment of premium pay:

(1) An employee given training during a period of duty for which he or she is already receiving premium pay for overtime, night, holiday, or Sunday work, except that this exception does not apply to an employee assigned to full-time training at institutions of higher learning;

(2) An employee given training at night because situations which he or she must learn to handle occur only at night;

(3) An employee given training on overtime, on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours;

(4) An employee given training during periods of temporary assignment covered by § 550.162(c) of this chapter.

(5) An employee given training during a period not otherwise covered by a provision of this paragraph where premium pay is authorized by the employing agency as an exception from the provision in paragraph (a) of this section under authority delegated to it by the Office of Personnel Management; and

(6) An employee given training during a period not otherwise covered by a provision of this paragraph where premium pay is authorized by the Office of Personnel Management in response to a request of the employing agency for an exception from the provision in paragraph (a) of this section.

(c) An employee who is excepted under paragraph (b) of this section is eligible to receive premium pay in accordance with the pay authorities applicable to him or her.

[44 FR 55134, Sept. 25, 1979]

§ 410.603 Subsistence payments for extended training assignments.

(a) An agency has the authority to pay all or—if agreed to by the employee—a part of actual subsistence expenses of an employee assigned to training at a temporary duty station. If an agency makes such payments during an assignment lasting more than 30 calendar days, paragraph (b) or (c) of this section shall apply. The agreed rate of payment shall be applicable from the first day of the assignment. An agency may adjust an agreed rate of payment when circumstances so justify provided any decrease in the rate of payment is agreed to by the employee. If lodging or meal costs are included in the fees paid to the training institution an appropriate reduction shall be made from any standardized subsistence payments.

(b) When standardized subsistence payments are made—

(1) An agency may pay 55 percent of the applicable full per diem rate specified by the Federal Travel Regulations.

(2) Where an agency has a large number of employees trained at facilities in a single area, the agency may make a standardized payment determined by the agency and based on survey data of actual subsistence expenses for that area, not exceeding the applicable full per diem rate specified by the Federal Travel Regulations.

(c) When an agency decides to make other than standardized payments, it may pay all or a part of the actual subsistence expenses including the cost of acceptable lodging and meals provided by the training facility or other nearby facility plus an incidental expenses payment. Any payment greater than the 55-percent rate authorized in paragraph (b)(1) may be made only after documentation of the circumstances (e.g., unavailability of acceptable lower cost lodging) leading the agency to the conclusion that the higher payment would be in the public interest. An agency shall not make any payment above the applicable full per diem rate specified by the Federal Travel Regulations.

[52 FR 7402, Mar. 11, 1987]

§ 410.604 Protection of Government's interests, incomplete training.

The head of an agency shall establish such procedures as he considers necessary to protect the Government's interest when employees fail to complete training for which the agency pays the expenses.

[33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969. Redesignated at 46 FR 40672, Aug. 11, 1981]

§ 410.605 Records of training expenses.

An agency shall maintain records of payments made for travel, tuition and fees, and other necessary expenses of training by, in, or through non-Government facilities.

[33 FR 16431, Nov. 9, 1968; 34 FR 2479, Feb. 21, 1969. Redesignated at 46 FR 40672, Aug. 11, 1981]

Subpart G—Acceptance of Contributions, Awards, and Payments From Non-Government Organizations

§ 410.701 Scope.

(a) This subpart relates to contributions, awards and payments made to employees, or on their behalf, by non-Government organizations in connection with training that the employees receive in non-Government facilities, or meetings that they attend, either (1) partially or wholly within periods when they are on duty; or (2) at such other times as their agencies pay the expenses of training or of attendance at meetings in whole or in part.

(b) This subpart does not limit the authority of a head of an agency to establish such procedures as he considers appropriate concerning the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart.

§ 410.702 Authority of agencies to authorize acceptance.

The head of an agency or a representative designated by him for this purpose under § 410.703 may authorize in writing an employee of his agency to accept a contribution or award (in cash or in kind) incident to training in non-Government facilities or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if the contribution, award, or payment is made either by an organization determined by the Secretary of the Treasury to be an organization described in section 501(c)(3) of title 26, United States Code, which is exempt from taxation under section 501(a) of that title or by an organization to which the prohibitions in section 209 of title 18, United States Code, do not apply, and if, in the judgment of the head of the agency or his designated representative, the following two conditions are met:

(a) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(b) Acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(3) Would be compatible with the Code of Ethics for Government Service expressed in House Concurrent Resolution 175, 85th Congress, second session; and

(4) Would otherwise be proper and ethical for the employee concerned under the circumstances in his particular case.

§ 410.703 Delegation of authority to authorize acceptance.

The head of an agency may designate a representative to act for him in authorizing the acceptance of contributions, awards, and payments under § 410.702. Delegation of authority to act in this matter shall be held to as high an administrative level as practicable to assure that the policies of the agency head are reflected in each decision, and that there is full evaluation of the circumstances of each case in the light of the conditions set forth in § 410.702.

§ 410.704 Acceptance of contributions, awards, and payments.

An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this subpart only with specific written authorization granted under § 410.702.

§ 410.705 Identification of organization when more than one participates.

When more than one non-Government organization participates in making a single contribution, award, or payment, the "organization" referred to in this subpart is considered to be the one that selects the recipient and administers the funds from which the contribution, award, or payment is made.

§ 410.706 Records.

An agency shall maintain, in such form and manner as the head of the agency considers appropriate, the following records in connection with each contribution, award, or payment made and accepted under authority of this subpart: The name of the recipient; the name of the organization; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.702.

Subpart H—[Reserved]

Subpart I—Reports and Interchange of Training Information

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and the reports required by this section shall be prepared for each fiscal year. An agency shall submit a consolidated report to OPM by the date specified each year by OPM in its notification to agencies.

(b) The consolidated report shall include:

(1) A narrative summary—

(i) Outlining, in the first report to OPM under this section, the training policies and overall program of the agency and, in each subsequent report, any major changes in policy or shifts in program emphasis;

(ii) Describing the manner in which training has aided in the accomplishment of the mission of the agency by providing skills and knowledges;

(iii) Assessing generally the value of training to the agency;

(iv) Assessing generally the extent to which economies and improved operation have resulted in the agency from training; and

(v) Providing other information which OPM may request concerning specific areas of agency training activity.

(2) A statistical summary, in the format prescribed by OPM, on employee participation and agency expenditures in training conducted through agency, interagency, and non-Government facilities.

(3) A Long-Term Training Report, OPM Form 1306, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees receiving training by, in, or through non-Government facilities for more than 120 days.

(4) A Contributions and Awards Report, OPM Form 1307, containing special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities.

(5) A report on personnel engaged in agency training activities, OPM Form 1186.

(6) Information on the number of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, and a description of the action taken with respect to the recovery of the additional expenses incurred by the Government in connection with their training.

(7) Such other information as OPM may request.

(c) OPM may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

[54 FR 23632, June 2, 1989]

§ 410.902 Interchange of training information.

An agency, at the time and in the manner it considers appropriate, or at the request of OPM, shall inform OPM and, as appropriate, other agencies, and State and local governments of new, different, or particularly successful training practices or materials which it develops or acquires and which it is able to share with others.

[36 FR 13202, July 16, 1971]

PART 412—EXECUTIVE AND MANAGEMENT DEVELOPMENT

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412.505 "Status" programs.
412.507 "Non-status" programs.
412.509 Competitive appointments.

AUTHORITY: 5 U.S.C. 3397.

SOURCE: 45 FR 80470, Dec. 5, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 412.101 Purpose.

This subpart sets forth the requirement for agencies to establish executive and management development programs, and prescribes the criteria of the Office of Personnel Management for such programs, which implement subsections (a) and (b) of section 3396 of title 5, United States Code, and are prescribed under the authority of section 3397 of title 5, United States Code.

§ 412.103 Requirement for agency programs.

(a) Each agency shall establish and maintain an executive and management development program, to consist of the following components:

(1) A program(s) for the continuing development of senior executives.

(2) For an agency with positions in the Senior Executive Service, a program(s) for the systematic development of candidates for the Senior Executive Service; small agencies, those with 150 SES positions or fewer, may meet this requirement by developing programs jointly with other agencies or by participating in programs administered by other agencies.

(3) Either or both of the following, for the development of managers:

(i) Open management development systems offering management development opportunities to all incumbent managers and some potential managers.

(ii) Selective management development programs offering management development opportunities to competitively selected employees.

(b) Each agency's executive and management development program(s) must conform to criteria prescribed in § 412.107 of this subpart.

§ 412.105 Approval of agency programs.

The Office shall review periodically agency executive and management development programs and approve those which meet the criteria prescribed in § 412.107. Whenever approved agency programs are found to fall substantially short of meeting any of the criteria, OPM approval will be withdrawn until the agency takes the necessary corrective action to bring the program into compliance.

§ 412.107 Criteria for agency executive and management development programs.

(a) *Program management.* Overall planning and management of the agency executive and management development program(s) shall be provided by a departmental or independent agency executive resources board or a complex of executive boards at agency and subordinate levels. Executive resources boards shall ensure that executive and management development programs are efficiently and effectively implemented as indicated by systematic evaluation of the program and by the incorporation of evaluation results into planning for successive program operations. Boards shall also ensure that executive development programs and activities are integrated into and consistent with the agency's

Senior Executive Service personnel system.

(b) *Funding and staffing.* Each program established under § 412.103 shall include provisions for funding and staffing needed to support the program. Each agency must be able to demonstrate that planned expenses for staff services, developmental assignments, selection procedures, formal training, program evaluation, and related matters will be met. Each agency must also be able to demonstrate that it is providing adequate numbers of competent staff to support planned executive and management development activities.

(c) *SES candidate development programs*—(1) *Selection systems.* Qualifications Review Boards (QRBs) established by OPM must, by law, certify the executive qualifications of all candidates for initial career appointment to the SES, including candidates who shall have completed approved executive development programs. However, the QRB shall presume that a candidate who successfully completes an SES candidate development program approved by OPM meets the executive qualifications for initial career appointment to the SES. Individuals certified by a QRB on the basis of completion of an executive development program are automatically in the "well qualified" group for any managerial position for which they meet the technical/professional qualifications and may be appointed to the SES without further merit competition. Therefore, selections for participation in candidate development programs are considered to be part of the process of selection for the SES, must follow the SES merit staffing procedures prescribed by OPM, must comply with the Uniform Guidelines on Employee Selection Procedures, and must provide for the removal from the program of individuals who do not make satisfactory progress as determined by the agency Executive Resources Board. In addition, selection systems for SES candidate development programs shall:

(i) Be based on the managerial and technical competencies required in the agency's SES positions;

(ii) Serve to further progress toward affirmative action goals;

(iii) Provide, in each agency with over 150 SES positions, for recruitment of candidates from all groups of qualified individuals within the civil service, or from all groups of qualified individuals, whether or not within the civil service. Programs that over a three-year period average eight per cent candidate intake from other agencies and/or outside the civil service shall automatically be considered to be in compliance with this requirement;

(iv) Be based on projections of anticipated SES vacancies, made at least biennially, with the number of candidates selected to be no greater than twice the number of projected vacancies; and

(v) Focus primarily on individuals who are just below SES level.

(2) *Development of SES candidates.* (i) Each participant in an SES candidate development program shall have an individual development plan ("IDP"), approved by the appropriate executive resources board, specifying the developmental activities (work assignments, training, education, and/or orientation) to be undertaken during the course of the program. These activities shall be tailored to provide the individual with the executive competencies needed by SES members Governmentwide and in the agency's SES positions, and must include participation in an interagency executive development training experience, prescribed by the Office, which focuses on Governmentwide executive competencies. Agencies may apply to OPM for a waiver of the interagency executive development training experience for individual SES candidates on a case by case basis.

(ii) Each participant in an SES candidate development program shall have a member of the Senior Executive Service as a senior advisor.

(d) *Development of SES members.* Systems for the continuing development of SES members shall:

(1) Include preparation, implementation, and regular updating of an individual development plan for each SES member, to be approved by the appropriate executive resources board.

These plans shall be tied to the performance appraisal cycle and focus on the enhancement of existing competencies as well as the correction of deficiencies identified in performance appraisals, and on preparing SES members for future assignments; and

(2) Result in developmental experiences for SES members which, through continuing short-term opportunities and periodic involvement in longer-term programs, will:

(i) Help to meet organizational needs for managerial improvement and increased productivity;

(ii) Help SES members to keep up-to-date in professional, technical, managerial, sociological, economic and political areas; and

(iii) Meet the individual needs of SES members for growth and development—intellectually and personally; and

(3) Include provisions for executive sabbaticals for carefully selected members as provided for by subsection (c) of section 3396 of title 5, United States Code.

(e) *Management development.* Executive development programs shall be linked to more comprehensive systems and/or programs for the development of managers. Such systems and/or programs shall:

(1) Provide management training and development experiences for both incumbent managers and specialists identified as having potential at grades GS-13 through GS-15 to meet agency and individual needs;

(2) Serve to further progress toward affirmative employment goals (where appropriate to this purpose, an agency may include employees at grade GS-12);

(3) Be designed to improve accountability, productivity and performance at the mid-management level; and

(4) Provide a foundation of early management training and appropriate developmental experiences for SES candidate development programs.

§ 412.109 Submissions to OPM.

(a) Each agency making or intending to make more than five career appointments to the Senior Executive Service shall establish its executive and management development program in accordance with a program plan which has been approved by OPM.

(b) These agencies shall submit formal updates of their executive and management development program plans as of December 31, 1980, and October 1, 1981, 1982 and 1983. Updates should be submitted by the chairperson of the departmental or independent agency executive resources board.

(c) Agencies shall also inform OPM of any significant changes as they occur during the fiscal year.

(d) Agencies whose programs are sufficiently well established during the first three years may be exempted, by the letter granting long-term OPM approval of their programs, from the later updates.

Subparts B–D—[Reserved]

Subpart E—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.501 Purpose.

This subpart sets forth regulations establishing two types of SES candidate development programs and prescribing their use by agencies.

§ 412.503 Policy.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. In order to accommodate candidates from various sources in the most flexible manner possible, two types of programs (which may be administered in close coordination with each other) are authorized:

(1) "Status" programs for the development of candidates serving in career and career-type appointments, and

(2) "Non-status" programs for the full-time development of candidates selected from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service, utilizing the Schedule B appointing authority authorized by 5 CFR 213.3202(j).

412.505 "Status" programs.

Only employees serving under career ppointments, or under career-type ppointments as defined in 5 CFR 17.304(a)(2), may participate in these rograms.

412.507 "Non-status" programs.

(a) *Eligibility.* For Schedule B prorams, eligibility is restricted to indiiduals other than employees serving nder career appointments, or under areer-type appointments as defined in CFR 317.304(a)(2).

(b) *Requirements.* (1) An appointment under the Schedule B authority may not exceed, or be extended eyond, three years.

(2) Agencies must document, as part f their executive development proram plan submitted to OPM for aproval, the kinds of additional develpmental experiences which will be rovided to individuals selected for hese programs. OPM shall be notified romptly of any such changes to gency plans.

(3) Schedule B appointments must e made in the same manner as merit taffing requirements prescribed for he SES, except that each agency hall follow the principle of veteran reference as far as administratively easible. Positions filled through this uthority are excluded under 5 CFR 02.101(c)(6) as positions exempt from ppointment procedures of Part 302.

(4) Assignments must be for developmental purposes connected with the SES candidate development program. andidates serving under Schedule B ppointment may not be used to fill an gency's regular positions on a continuing basis.

§ 412.509 Competitive appointments.

(a) An agency must use the Schedule B excepted appointment authority [§ 213.3202(j)] to fill positions established exclusively for the agency's non-status executive development program.

(b) An agency may not use competitive appointment authorities to fill these positions.

(c) However, an agency may use competitive appointment authorities to fill permanent vacant positions when the appointee is simultaneously being selected as a participant in the agency's status SES candidate development program.

PART 430—PERFORMANCE MANAGEMENT

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AUTHORITY: 5 U.S.C. chapters 43, 45, 53, and 54.

Subpart A—Performance Management System

SOURCE: 51 FR 8411, Mar. 11, 1986, unless otherwise noted.

§ 430.101 Authority.

Chapters 43, 45, 53, and 54 of title 5, U.S. Code, provide for performance appraisal, awards, pay, and the Performance Management and Recognition System for Federal employees. This subpart supplements and implements those portions of the law as well as Parts 451, 531, and 540 of this chapter.

§ 430.102 Performance management.

Performance management is the systematic process by which an agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

§ 430.103 Performance Management Plans.

(a)(1) A Performance Management Plan is the description of an agency's system for implementing all aspects of performance management.

(2) OPM will provide checklists for Performance Management Plans or parts of plans containing all the components necessary for approval of a plan or part of a plan.

(b) Agencies must submit all parts of proposed Performance Management Plans to OPM for review and approval. If major subcomponents of an agency propose to modify an element of the agency's system that is included in the Performance Management Plan Checklist, or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Performance appraisal systems plans required under 5 U.S.C. 4302, 4302a, and 4312 and Subparts B, C, and D of this part.

(2) Performance Management and Recognition System (PMRS) plans required under Part 540 of this chapter.

(3) Performance awards plans required under Subpart E of this part, including the agency's method for funding and payment of performance awards and the method for determining projected expenditures.

(4) Superior Accomplishment Awards plans required under Part 451, Subpart A.

(5) Productivity Gainsharing Program plans required under Part 451, Subpart C.

(6) Plans for determining and distributing within-grade increases under Part 531, Subpart D of this chapter; and

(7) Plans for awarding quality step increases under Part 531, Subpart E of this chapter.

(c) Agencies shall submit to OPM for review and approval any changes to their Performance Management Plans that modify any element of the agency's system that is included in a Performance Management Plan Checklist.

(d) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management System or any part of a plan.

Subpart B—Performance Appraisal for General Schedule and Prevailing Rate Employees

SOURCE: 51 FR 8412, Mar. 11, 1986, unless otherwise noted.

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code (5 U.S.C. 4301-4305) provides for the establish-nent of agency performance appraisal systems and for appraisal of employees. This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for Performance Appraisal Systems for General Schedule and prevailing rate employees, and implements and supplements the provisions of 5 U.S.C. 4301-4305.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying agency goals and objectives;

(2) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting basic pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(1) of title 5, United States Code, lists agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, lists employees covered by statute by this subpart. However, employees covered by the PMRS are not covered by this subpart.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission, or to employees covered by the PMRS consistent with 5 U.S.C. 4302a and 5 U.S.C. 5402.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by noncareer executive assignments under Part 305 of this chapter.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows—

Appraisal means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

Appraisal period means the period of time established by an appraisal system for which an employee's performance will be reviewed.

Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

Critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

Non-critical element means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

Performance means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

Performance Appraisal System: see Appraisal system.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by Subpart A of this part.

Performance plan means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

Performance standard means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Progress review means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

Rating: see Summary rating.

Rating of record means the summary rating required at the time specified in the Performance Management Plan or at such other times as the Plan specifies for special circumstances.

Summary rating means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.204 (g) and (h) of this subpart).

§ 430.204 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (h) of this section, must be assigned.

(c) Each appraisal system shall encourage employee participation in establishing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employee's positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than that of the appraising official. Agencies may describe exceptions to higher level review and approval of performance plans in their Performance Management Plans.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter—

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee whose performance is "Unacceptable", but only after affording the employee a reasonable opportunity to demonstrate acceptable performance, as required by 5 U.S.C. 4302(b)(6).

(2) At the time that an agency identifies the critical element(s) for which performance is "Unacceptable", the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity to demonstrate acceptable performance, referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency may reassign, reduce-in-grade, or remove the employee, as provided by 5 U.S.C. 4302(b)(6) and 4303(a).

(k) When an employee's position under any Federal pay system is converted to a pay system covered by this subpart, and when there is no change of duties and responsibilities, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

[51 FR 8412, Mar. 11, 1986, as amended at 55 FR 25949, June 26, 1990; 55 FR 27760, July 5, 1990]

§ 430.205 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall generally be given a rating of record on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has changed; agency Performance Management Plans must describe how these ratings and any other ratings given throughout the appraisal period will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) Appraisal of each element. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparision with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.206 Ratings.

(a) *Written rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and performance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than that of the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency. Agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared as required by § 430.205(a) of this subpart, which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.207 Performance appraisal advisory committees. [Reserved]

§ 430.208 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.209 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.210 Performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with subpart A of this part and provisions of this subpart.

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

Source: 51 FR 8414, Mar. 11, 1986, unless otherwise noted.

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, U.S. Code (5 U.S.C. 4311-4314) provides for the establishment of Senior Executive Service (SES) performance appraisal systems, and for appraisal of the performance of senior executives (as defined in 5 U.S.C. 3132(a)). This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for performance appraisal in the SES, and supplements and implements the provisions of 5 U.S.C. 4311-4315.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying organizational goals and objectives;

(2) Identifying individual accountability for the accomplishment of agency goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting base pay, training, rewarding, reassigning, retaining, and removing employees.

§ 430.302 Coverage.

(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code, are covered by this part.

(b) Section 3132(a)(1) of title 5, United States Code identifies agencies covered by this subpart.

§ 430.303 Definitions.

In this subpart, terms are defined as follows:

Appointing authority means the agency or department head or his or her designee.

Appraisal means the act or process of reviewing and evaluating the performance of the executive against the described performance standard(s).

Appraisal period means the period of time established by an appraisal system for which the senior executive's performance will be reviewed.

Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

Critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unsatisfactory performance on the element would result in unsatisfactory performance in the position.

Final rating means the rating of record assigned by an appointing authority after considering the recommendations of a Performance Review Board.

Initial rating means the summary rating made by the senior executive's supervising official and provided to the Performance Review Board.

Non-critical element means a component of an executive's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

Performance means the senior executive's accomplishment of assigned work as specified in the critical and non-critical elements of the executive's position.

Performance Appraisal: (see Appraisal)

Performance Appraisal System: see Appraisal system.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of the agency's mission and goals. The Performance Management Plan, which includes the SES performance appraisal plan, must be submitted to OPM for review and approval as required in § 430.310 of this subpart and in subpart A of this part.

Performance plan means the aggregation of all of the senior executive's written critical and non-critical elements and performance standard(s).

Performance requirement means performance standard.

Performance standard means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

Progress review means a review of the executive's progress toward achieving the performance standards and is not in itself a rating.

Rating of record means the final rating.

Summary rating means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.304 (f) and (g) of this subpart).

§ 430.304 SES performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.

(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.

(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives' positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each SES appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(g) Each SES appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally Satisfactory" level, and a "Fully Successful" level. Agencies may also establish up to two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, and "Fully Sucessful" is level 3. A level one level above "Fully Successful" is level 4, and a level two levels above "Fully Successful" is level 5.

(h) Each SES appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(i) Subject to the provisions of Part 359, Subpart E of this chapter:

(1) Any executive receiving a level 1 ("Unsatisfactory") rating of record shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) Any executive who receives two level 1 ("Unsatisfactory") ratings of record in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(3) Any executive who twice in any period of 3 consecutive years receives less than a level 3 "Fully Successful" rating of record shall be removed from the Senior Executive Service.

[51 FR 8414, Mar. 11, 1986, as amended at 54 FR 2987, Jan. 23, 1989]

§ 430.305 Appraisal of performance.

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall be given a rating of record at least annually. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency SES Performance Management Plan(s) must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

(2) Except as provided in paragraph (b) of this section, a performance appraisal period may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance.

(3) Notwithstanding paragraphs (a)(2) and (b) of this section, in the case of a career appointee, an appraisal and rating may not be made within 120 days after the beginning of a new Presidential administration.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days and not more than 120 days, except as provided in paragraph (a)(3) of this section.

(c) *Appraisal of each element.* An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When senior executives are detailed or temporarily reassigned within the same agency, and the detail or temporary assignment is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to the executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment. Ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next rating of record.

(2) When senior executives are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

(i) If an executive has served in the employing agency for the minimum appraisal period, the executive must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an executive has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each executive at least once during the appraisal period. At a minimum, executives shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

[51 FR 8414, Mar. 11, 1986, as amended at 54 FR 2987, Jan. 23, 1989]

§ 430.306 Ratings.

(a) *Initial Rating.* Appraisal systems shall provide for:

(1) A written initial rating of the executive's performance made by the executive's supervising official, and provided to the senior executive;

(2) An opportunity for the senior executive to respond in writing to an initial rating;

(3) An opportunity for review of the rating by an employee in a higher executive level than that of the supervisor, unless there is no one at a higher level, before review by the PRB as provided in § 430.307 (e) and (g);

(4) Provision of the senior executive's response to both the official making the higher level review and to the PRB; and

(5) Provision of copies of the reviewer's comments and recommendations to the senior executive, the supervising official, and the PRB.

(b) *Higher level review.* (1) Agency performance appraisal systems may provide for a mandatory second level review of all initial ratings.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(c) *Final rating.* A written rating of record of the executive's performance shall be made on an annual basis by the appointing authority only after considering the recommendations by the PRB with respect to the performance of the senior executive as provided in § 430.307.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an executive moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.404(b)(2) of this chapter. A summary rating must be prepared as required in § 430.305(a) which must be taken into consideration by the gaining agency when deriving the next rating of record.

(g) *Documentation.* Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: the initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any comments and recommended changes by a higher level executive; and the final rating. As required in § 293.404(b)(1) of this chapter, agencies are required to maintain all performance related records for no less than 5 years from the date the rating is issued.

§ 430.307 Performance Review Boards (PRBs).

As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRBs to make recommendations to the appointing authority on the performance of senior executives in the agency.

(a) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(b) Notice of appointment to the PRB must be published in the FEDERAL REGISTER.

(c) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(d) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(e) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(f) Individual PRB members must not take part in any PRB deliberations involving their own appraisals.

(g) The PRB must make a written recommendation concerning each senior executive's rating of record.

§ 430.308 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.309 OPM review of SES appraisal systems.

(a) OPM will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.310 SES performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with subpart A of this part and provisions of this subpart.

Subpart D—Performance Appraisal for the Performance Management and Recognition System

SOURCE: 50 FR 35495, Aug. 30, 1985, unless otherwise noted.

§ 430.401 Statutory authority.

Title 5, U.S. Code, section 4302a provides for the establishment of performance appraisal systems for Performance Management and Recognition System (PMRS) employees. This subpart contains regulations which the Office of Personnel Management has prescribed for performance appraisal under the Performance Management and Recognition System, and implements and supplements the provisions of 5 U.S.C. 4302a.

§ 430.402 Purpose.

It is the purpose of this subpart to ensure that performance appraisal systems for Performance Management and Recognition System, employees are used as a tool for executing basic management and supervisory responsibilities by:

(a) Communicating and clarifying agency goals and objectives;

(b) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(c) Evaluating and improving individual and organizational accomplishments; and

(d) Using the results of performance appraisal as a basis for adjusting base pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.403 Coverage.

(a) *Employees and agencies covered by statute.* This subpart applies to any supervisor or management official, as defined in 5 U.S.C. 7103 (a)(10) and (a)(11), who is in a position within grades GS-13, GS-14, or GS-15 of the General Schedule and covered by Part 540 of this chapter.

(b) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by Noncareer Executive Assignments under Part 305 of this chapter.

(c) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.404 Definitions.

In this subpart, terms are defined as follows—

Appraisal means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

Appraisal period means the period of time established by an appraisal system for which an employee's performance will be reviewed.

Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

Critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

Non-critical element means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

Performance means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

Performance Appraisal System. (See Appraisal System).

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The performance management plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by § 430.411 of this subpart and § 540.111 of this chapter.

Performance plan means the aggregation of all of an employee's written critical and non-critical elements and performance standard(s).

Performance standard means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Progress review means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

Rating (See Summary Rating).

Rating of record means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances.

Summary Rating means the written record of the appraisal of each critical and non-critical element and the assignment of summary rating level (as specified in § 430.405(h) of this subpart).

[50 FR 35495, Aug. 30, 1985, as amended at 54 FR 26179, June 21, 1989]

§ 430.405 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by the Performance Management and Recognition System.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in § 430.405(h), must be assigned.

(c) Each appraisal system must provide for the joint participation of the supervising official and the employee in developing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d)(1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employees' positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, work-plans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than the appraising official.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for a performance improvement plan (PIP) for each employee whose performance has been determined to be below fully successful on one or more critical elements. The PIP must:

(1) Notify the employee of the critical element(s) in which he/she is performing below the fully successful level;

(2) Describe the types of improvements that the employee must demonstrate to attain the fully successful level of performance;

(3) Offer assistance to the employee in improving to the fully successful level (which may include: Formal training, on-the-job training, counseling, and closer supervision); and

(4) Provide the employee a reasonable period of time to attain that level.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 213.3301 of this chapter,

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee who fails to attain at least the fully successful level but only after affording the employee a reasonable period to improve performance to the fully successful level or higher on the critical element(s) rated below fully successful, as required in 5 U.S.C. 4302a(b)(6).

(2) Once the employee has been afforded the reasonable period referred to in paragraph (j)(1) of this section, the agency may reassign, reduce in grade or remove the employee as provided by 5 U.S.C. 4302a(b) if the employee fails to attain fully successful performance.

(k) When an employee's position under the General Schedule is converted to PMRS with no change of duties and responsibilities in accordance with 540.103(b)(1), the employee's rating of record will be considered to have been derived from elements and standards established under 5 U.S.C. 4302a.

[50 FR 35495, Aug. 30, 1985, as amended at 54 FR 49075, Nov. 29, 1989; 55 FR 25949, June 26, 1990]

§ 430.406 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has changed; agency performance management plans must describe how these ratings will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) *Appraisal of each element.* An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.407 Ratings.

(a) *Written Rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and performance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, in order to provide for the equitable distribution of merit increases and performance awards under the PMRS, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful." These procedures must be described in the agency's performance management plan.

(e) *Reconsideration process.* Upon request by the employee, his or her rating of record shall be reconsidered. The employee must be given the right to a reconsideration by a person at a higher level in the organization than the appraising, reviewing, or approving official, unless there is no one at a higher level. This does not preclude the involvement of such officials at intermediate levels in the process. The procedures for such reconsideration shall be in accordance with Part 771 of this chapter.

(f) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended, for non-pay purposes, for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared. (For pay purposes refer to Part 540 of this chapter.)

(g) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.408 Performance standards review boards.

(a)(1) Each agency shall establish one or more performance standards review boards. Each board will consist of at least six members chosen by the agency head or his or her designee. One-half of the board must be composed of employees covered by the PMRS and in the competitive service. The chair of the board will be chosen by the head of the agency or his or her designee.

(2) Agency performance management plans shall set forth the composition and operating procedures for the board(s). Boards shall become operational upon OPM's approval of the agency's performance management plan and shall report to their respective agency heads or designees at least annually.

(3) The board(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The board shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans.

(4) Boards shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the equitable application of standards but shall not recommend any distribution of ratings. Such reviews shall be conducted after ratings of record have been prepared and communicated.

(5) Boards are also responsible for studying the feasibility of organizational awards and providing technical assistance on any demonstration projects on performance appraisal.

§ 430.409 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.410 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of 5 U.S.C. 43 or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.411 Performance appraisal plans.

(a) Agencies must submit proposed performance appraisal system to OPM for approval as part of the performance management plans required at § 540.111 of this chapter. If major subcomponents of an agency propose to modify any element of the agency's system that is included in the Performance Management Plan Checklist, as provided in § 540.111(b)(1), or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(b) Agencies shall submit to OPM for approval any changes to their performance appraisal plans that modify any element of the agency's system that is included in the Performance Management Plan Checklist.

§ 430.412 Reports.

So that OPM can provide the Congress and others with information regarding the operation of the Performance Management and Recognition

System and performance management plans including the performance appraisal systems, each agency shall maintain such records and submit to OPM such reports as OPM may require.

Subpart E—Performance Awards

Source: 51 FR 8417, Mar. 11, 1986, unless otherwise noted.

§ 430.501 Authority and coverage.

(a) This subpart contains the Office of Personnel Management's (OPM) regulatory requirements for establishng and conducting the performance awards component of the Performance Management System, under the authority of title 5, United States Code, chapters 43 and 45.

(b) This subpart applies to employees as defined under section 2105 of itle 5, United States Code, but does not include employees under the Perormance Management and Recogniion System, nor employees in the Senior Executive Service.

(c) This subpart applies to agencies s defined in section 4501 of title 5, Jnited States Code.

(d) Refer to Part 451, Subpart A of his chapter for the regulatory reuirements for granting Superior Acomplishment Awards to employees or suggestions, inventions, and special cts or services.

430.502 Definitions.

In this subpart, terms are defined as ollows:

"Performance award" means a perormance-based cash payment to an mployee based on the employee's ating of record. A performance award oes not increase base pay.

"Performance award budget" means he amount of money allocated by an gency for distribution as performance wards to covered employees.

"Performance Management Plan" eans the description of the agency's ethods which integrate performance, ay, and awards systems with its basic anagement functions for the purose of improving individual and orgaizational effectiveness in the accomlishment of agency mission and goals. he Performance Management Plan, which includes the performance awards plan, must be submitted to OPM for review and approval as required by § 430.506 of this subpart and Subpart A of this part.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the plan specifies for special circumstances.

§ 430.503 Policy.

(a) The purpose of performance awards is to motivate employees by recognizing and rewarding those who attain high levels of performance.

(b) An award under this subpart shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid.

(c)(1) Agency procedures for making performance awards determinations must include a requirement for review and approval of each determination by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) with responsibility for managing the performance awards budget within the agency.

(2) Higher level review and approval of performance awards determinations, as required in paragraph (c)(1) of this section must be made by the officials also responsible for making the performance appraisal decisions.

(d) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(e) A performance award shall be given due weight when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(f) OPM encourages agencies to make maximum use of their authorities under chapters 43 and 45 of title 5, United States Code, within existing appropriated funds to establish and administer performance awards programs that best support and enhance agency and national goals and meet employee recognition needs.

§ 430.504 Funding and payment. [Reserved]

§ 430.505 Responsibilities of the Office of Personnel Management.

In accordance with Subpart A of this part, OPM shall review and approve the agency performance awards component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 430.506 Agency responsibilities.

(a) The head of each agency shall, within existing appropriated funds, establish a performance awards program as a component of the Performance Management System.

(b) The head of each agency shall submit to OPM—

(1) A performance awards plan, as part of the Performance Management Plan, which includes provisions for determining the agency performance awards fund, and the method for determining projected expenditures, for review and approval as provided in Subpart A of this part;

(2) Proposed plan revisions for review and approval as required in Subpart A of this part;

(3) All recommendations for performance awards in excess of $10,000 up to $25,000 for review and approval;

(4) At the beginning of each fiscal year, the estimated performance awards budget, including the funding level used; and

(5) An annual report on performance awards activities for the past fiscal year.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

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AUTHORITY: 5 U.S.C. 4302a, 4303, and 4305.

SOURCE: 54 FR 26179, June 21, 1989, unless otherwise noted.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the Performance Management and Recognition System (PMRS) based solely on performance below the fully successful level and the reduction in grade and removal of other employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance and 5 U.S.C. 4302a(b) which covers actions to reduce in grade or remove employees covered by the Performance Management and Recognition System for performance below the fully successful level. (The provisions of 5 U.S.C. 7501 *et. seq.*, may also be used to reduce in grade or remove employees. See part 752 of this chapter.)

[54 FR 49076, Nov. 29, 1989]

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of:

(1) Employees, covered by the PMRS, based on performance below the fully successful level; and

(2) Employees, not covered by the PMRS, based on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before be-

oming a supervisor or manager in ac-
ordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or remov-
l of an employee in the competitive
ervice who is serving a probationary
r trial period under an initial ap-
ointment;

(3) The reduction in grade or remov-
l of an employee in the competitive
ervice serving in an appointment that
equires no probationary or trial
eriod who has not completed 1 year
f current continuous employment in
he same or similar position under
ther than a temporary appointment
imited to 1 year or less;

(4) The reduction in grade or remov-
l of an employee in the excepted serv-
e who has not completed 1 year of
urrent continuous employment in the
ame or similar positions;

(5) An action imposed by the Merit
ystems Protection Board under the
uthority of 5 U.S.C. 1206;

(6) An action taken under 5 U.S.C.
521 against an administrative law
udge;

(7) An action taken under 5 U.S.C.
532 in the interest of national securi-
y;

(8) An action taken under a provi-
ion of statute, other than one codi-
ed in title 5 of the U.S. Code, which
xcepts the action from the provisions
f title 5 of the U.S. Code;

(9) A removal from the Senior Exec-
tive Service to a civil service position
utside the Senior Executive Service
nder Part 359 of this chapter;

(10) A reduction-in-force governed
y Part 351 of this chapter;

(11) A voluntary action by the em-
loyee;

(12) A performance-based action
ken under Part 752 of this chapter;

(13) An action that terminates a
emporary or term promotion and re-
rns the employee to the position
om which temporarily promoted, or
a different position of equivalent
ade and pay if the agency informed
e employee that it was to be of limit-
l duration;

(14) A termination in accordance
ith terms specified as conditions of
nployment at the time the appoint-
ent was made; and

(15) An involuntary retirement because of disability under Part 831 of this chapter.

(c) *Agencies covered.* This part applies to:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation;

(4) The Administrative Office of the U.S. Courts; and

(5) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to:

(1) A Government corporation;

(2) The Central Intelligence Agency;

(3) The Defense Intelligence Agency;

(4) The National Security Agency;

(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;

(6) The General Accounting Office;

(7) The U.S. Postal Service; and

(8) The Postal Rate Commission.

(e) *Employees covered.* This part applies to individuals employed in or under a covered agency as specified at § 432.102(c) except as listed in § 432.102(f).

(f) *Employees excluded.* This part does not apply to:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Department of Veterans Affairs, whose pay is fixed under Chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(11) A reemployed annuitant;

(12) A National Guard technican;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period;

(14) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter; and

(15) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 29, 1989]

§ 432.103 Definitions.

For the purpose of this part—

(a) "Acceptable performance" means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue where the employee is not covered by the Performance Management and Recognition System (PMRS). For those employees covered by the PMRS, acceptable performance is performance determined to be at the fully successful level or above in the critical element(s) at issue.

(b) *"Critical element"* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(c) *"Current continuous employment"* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) *"Opportunity to demonstrate acceptable performance"* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) *"Performance improvement plan"* means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

(f) *"Reduction in grade"* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(g) *"Removal"* means the involuntary separation of an employee from employment with an agency.

(h) *"Similar positions"* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(i) *"Unacceptable performance"* means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 29, 1989; 55 FR 25950, June 26, 1990]

§ 432.104 Addressing unacceptable performance by non-PMRS employees.

At any time during the performance appraisal cycle that a non-PMRS employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

[55 FR 25950, June 26, 1990]

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency should also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

[55 FR 25950, June 26, 1990]

§ 432.106 Proposing and taking action based on unacceptable performance for non-PMRS employees.

(a) *Proposing action based on unacceptable performance.* (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extention to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in § 339.102 of this chapter of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under § 432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.105(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of Part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under § 432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[54 FR 26179, June 21, 1989. Redesignated and amended at 54 FR 49076, Nov. 29, 1989]

§ 432.107 Proposing and taking action based on performance below the fully successful level for PMRS employees.

(a) *Proposing action based on performance below the fully successful level.* (1) Once an employee has been afforded an opportunity to improve performance to the fully successful level through a performance improvement plan pursuant to § 432.105, an agency may propose a reduction in grade or removal action if the employee's performance during or following the performance improvement plan is below fully successful in one or more of the critical elements for which the employee was afforded an opportunity to improve through a performance improvement plan.

(2) If an employee has performed at the fully successful level for one year from the beginning of a performance improvement plan (in the critical element(s) for which the employee was afforded a performance improvement plan) and the employee's performance again is determined to be below fully successful, the agency shall afford the employee an additional performance improvement plan before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of below fully successful performance which occur within a one-year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30-day advance notice of the proposed action that identifies both the specific instances of below fully successful performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of below fully successful performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her deficient performance to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification that the employee's performance is below fully successful and the establishment of the performance improvement plan under § 432.105. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.107(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for performance below the fully successful level may be based only on those instances of performance that occurred during the one year period ending on the date of issuance of the advance notice of proposed action under § 432.107(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of below fully successful performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[54 FR 49077, Nov. 29, 1989; 54 FR 50307, Dec. 5, 1989]

§ 432.108 Appeal and grievance rights.

(a) *Appeal rights.* An employee covered under § 432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(b) *Grievance rights.* (1) A bargaining unit employee covered under § 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.g.*, is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period.

(ii) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Election of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal on the matter with the Merit Systems Protection Board.

[54 FR 26179, June 21, 1989. Redesignated at 54 FR 49076, Nov. 29, 1989]

§ 432.109 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance for non-PMRS employees, or below fully successful performance for PMRS employees, and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with §§ 432.106(a)(4)(i) and 432.107(a)(4)(i), any entry or other notation of the unacceptable, or below fully successful, performance for which the action was proposed shall be removed from any agency record relating to the employee.

[55 FR 25950, June 26, 1990]

PART 451—INCENTIVE AWARDS

Subpart A—Agency Superior Accomplishment Awards

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Subpart C—Productivity Gainsharing Programs [Reserved]

AUTHORITY: 5 U.S.C. 4506 and 5407.

Subpart A—Agency Superior Accomplishment Awards

SOURCE: 51 FR 8418, Mar. 11, 1986, unless otherwise noted.

§ 451.101 Authority and coverage.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management (OPM) for establishing and conducting the Superior Accomplishment Awards component of the Performance Management System under the authority of title 5, United States Code, chapters 43, 45, and 54.

(b) This subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, are covered by the provisions of this subpart.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.102 Purpose.

Superior accomplishment awards are designed to improve Government efficiency, economy and effectiveness by motivating employees to increase productivity and creativity by rewarding their efforts which benefit the Government.

§ 451.103 Definitions.

Award or *superior accomplishment award* means a monetary or non-monetary award for a contribution resulting in tangible benefits or savings and/or intangible benefits to the Government.

Contribution means an accomplishment achieved through an individual or group effort in the form of a suggestion, an invention or a special act or service in the public interest connected with or related to official employment, which contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork.

Intangible benefits means benefits to the Government which cannot be measured in terms of dollar savings.

Non-monetary award means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the superior accomplishment awards plan, must be submitted to OPM for review and approval as required in Part 430, Subpart A and § 451.107 of this subpart.

Special act or service means a contribution or accomplishment in the public interest which is:

(a) A non-recurring contribution either within or outside of job responsibilities;

(b) A scientific achievement; or

(c) An act of heroism.

Superior accomplishment award: see *Award*.

Tangible benefits means benefits or savings to the Government that can be measured in terms of dollars.

§ 451.104 Policy.

(a) The Office of Personnel Management encourages agencies to make maximum use of their authorities under chapters 45 and 54 of title 5, United States Code to:

(1) Establish and administer superior accomplishment awards programs which best support and enhance agency and national goals, and meet employee recognition needs; and

(2) Provide for adequate funds to provide for payment of awards, and staffing and support services to assure prompt action on awards recommendations, and effective promotion and publicity of the program.

(b) Superior accomplishment awards programs shall provide for:

(1) The granting of recognition commensurate with the value of the contribution to the Government; and

(2) Obtaining maximum benefits for the Government, whenever possible, by considering the applicability of employee contributions throughout Government.

(c) An award under this subpart may be granted alone or in addition to a performance award granted under Parts 430, Subpart E, and 540 of this chapter, or a quality step increase granted under Part 531, Subpart E.

(d) An award under this part shall not be used as a substitute for other personnel actions, or as a substitute for pay.

(e) To be awarded under this subpart, a contribution must:

(1) Have been made while the contributor was a Government employee;

(2) Be supported by a written justification separate from the employee's rating of record; and

(3) Be approved at a management level higher than that of the individual who recommended use of the suggestion or invention, or recommended the award.

(f) Acceptance of a monetary award consitutes an agreement that the use by the Government of the idea, method, or device for which the award is paid does not form the basis of a further claim against the Government.

(g) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(h) Due weight shall be given to an award under this part when rating and ranking an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall assure that superior accomplishment awards programs are effectively implemented by providing appropriate training and information to supervisors and employees on the program, and establishing methods and procedures to evaluate periodically the effectiveness of the program and implement improvements as needed.

(j) Superior accomplishment awards shall not be mandatory.

§451.105 Payment.

(a) An award under this subpart is in addition to regular pay and does not increase an employee's base pay. The award is subject to the withholding of income taxes.

(b) When an award is approved for an employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award.

(c) When an award is approved for a member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with Executive Order 11438, "Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces".

§451.106 Responsibilities of the Office of Personnel Management.

(a) OPM shall review and approve the agency superior accomplishment awards component of the Performance Management Plan, and any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist, as required in Part 430, Subpart A, of this chapter.

(b) OPM shall review and approve or disapprove all recommendations for agency awards under this subpart in excess of $10,000 up to $25,000.

§451.107 Agency responsibilities.

(a) The head of each agency shall submit to OPM:

(1) The superior accomplishment awards component of the Performance Management Plan for review and approval as required in Part 430, Subpart A;

(2) Any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist as required in Part 430, Subpart A, for review and approval;

(3) Award recommendations in excess of $10,000 up to $25,000; and

(4) An annual report on program activities and expenditures for the past fiscal year and the amount budgeted for superior accomplishment awards for the current fiscal year.

(b) Agencies shall give consideration to accomplishment and adopted ideas for wider application both within the agency and Government-wide, and provide for prompt referral when appropriate.

Subpart B—Presidential Awards

Source: 51 FR 8419, Mar. 11, 1986, unless otherwise noted.

§ 451.201 Authority and coverage.

(a) Under title 5, United States Code, chapters 45 and 54, the President may pay a cash award to and incur necessary expenses for the honorary recognition of an employee who:

(1) By his/her suggestion, invention or other personal effort contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) Performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.

(b) During any fiscal year, the President may, subject to the provisions of 5 U.S.C. 4507, award to any Senior Executive career appointee recommended by OPM the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

(c) Except as provided in paragraph (b) of this section, this subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under title 5, United States Code, chapter 54 are covered by the provisions of this subpart.

(d) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.202 Payment.

(a) A Presidential award is paid by the agency(ies) primarily benefiting from the employee contribution.

(b) A Presidential award may be in addition to an agency award under Subpart A of this part.

§ 451.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management shall review annually agency recommendations for Presidential Rank Awards for career appointees of the Senior Executive Service under section 4507 of title 5, United States Code, and recommend to the President which of those career appointees should receive awards.

(b) The Office of Personnel Management, in accordance with Executive Order 10717, as amended, shall review agency recommendations for the President's Award for Distinguished Federal Civilian Service and recommend to the President which career employees should receive this award.

(c) Under Executive Order 11228, section 2, the Office of Personnel Management has the authority to determine the activity or activities primarily benefiting from any suggestion, invention, or other contribution which forms the basis for a Presidential award under 5 U.S.C. 4504 and 5407.

Subpart C—Productivity Gainsharing Programs [Reserved]

PART 470—PERSONNEL MANAGEMENT RESEARCH PROGRAMS AND DEMONSTRATIONS PROJECTS

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Authority: 5 U.S.C. 4706.

Source: 48 FR 2726, Jan. 21, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 470.101 Statutory authority.

(a) Section 4702, title 5, United States Code, provides the Office of Personnel Management (OPM) with the authority to:

(1) Establish and maintain, and assist in the establishment and maintenance of, research programs to study improved methods and technologies in Federal personnel management;

(2) Evaluate the research programs established under paragraph (a)(1) of this section;

(3) Establish and maintain a program for the collection and public dissemination of information relating to personnel management research, and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) Carry out the preceding functions directly or through agreement or contract.

(b) Section 4703, title 5, United States Code, provides OPM with the authority to conduct and evaluate demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

(c) This part supplements and implements the provisions of chapter 47 of title 5, United States Code, relating to the conduct of personnel research programs and demonstration projects, and must be read together with those provisions of law.

§ 470.103 Definitions.

In this part:

Demonstration Project means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management (5 U.S.C. 4701). The project must require the waiver of a provision of law, rule, or regulation which is eligible for waiver under the demonstration authority contained in 5 U.S.C. 4703. A project which can be undertaken under an agency's own authority and does not require the waiver of a provision of law, rule, or regulation is not considered a "demonstration project" for purposes of this part.

Research means systematic, intensive study directed toward fuller scientific knowledge or understanding of the subject studied. Activities classified as research are structured experimental or descriptive investigations conducted according to sound methodological principles.

Research Program means a planned study of the manner in which public management policies and systems are operating or have operated, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

Subpart B—Regulatory Requirements Pertaining to Research Programs

§ 470.201 Purposes of research programs.

The purposes of research programs undertaken under this subpart are to stimulate and conduct personnel management research which:

(a) Develops new knowledge, techniques, and materials about personnel management;

(b) Seeks solutions to personnel management problems;

(c) Provides a factual base to support existing or proposed changes in personnel management policies, techniques, and materials;

(d) Modifies or develops personnel management systems which improve the management of the Federal Government's human resources;

(e) Gathers, makes explicit, systematizes, and transmits the knowledge and techniques of practicing managers for the guidance of others and as a factual basis for research needs determination;

(f) Develops new methods or provides new standards for conducting personnel management research; or

(g) Designs systems for the assessment and transmittal of relevant personnel management strategies.

§ 470.203 Eligible parties.

Research may be conducted by the Office of Personnel Management, or under contract or agreement, as appropriate, by:

(a) Federal agencies;

(b) State and local governments;

(c) Institutions of higher education; or

(d) Other public or private institutions or organizations, profit or nonprofit.

§ 470.205 Initiation of research programs.

OPM will announce opportunities for research contracts by issuing Requests for Proposals (RFP's) in accordance with Federal procurement regulations. Unsolicited proposals may be accepted; however the relevance of the proposed research to OPM research needs will determine the acceptability of the proposal.

Subpart C—Regulatory Requirements Pertaining to Demonstration Projects

§ 470.301 Program expectations.

(a) Demonstration projects permit the Office of Personnel Management and Federal agencies to test alternative personnel management concepts in controlled situations to determine the likely effects and ramifications of proposed changes before putting them into general effect. OPM will assist agencies, within available resources, in developing projects which demonstrate new or improved personnel methods.

(b) The demonstration project must be proposed in a research context. The project plan must include a research design which contains:

(1) Measurable goals or objectives;

(2) Acceptable expected results or outcomes;

(3) A description of the procedures, methods and techniques to be demonstrated in achieving the desired goals or objectives;

(4) An evaluation section describing the data collection and analysis procedures to be used to assess the success or failure of the project from a qualitative and quantitative standpoint; and

(5) An itemization of all costs and benefits associated with the project, to the agency, the Government, and the community.

(c) OPM may establish and maintain activities which publish, exchange and apply the results of demonstration projects.

(d) OPM may seek legislation, or to the extent already authorized by law, make changes in regulation to implement permanently successful procedures, techniques, new management knowledge, and materials which improve personnel management programs or techniques.

§ 470.303 Eligible parties.

(a) Any Federal agency, or groups of two or more Federal agencies, eligible to propose demonstration projects under 5 U.S.C. 4701(a)(1) and 4701(b) may conduct demonstration projects after approval by the Office of Personnel Management and required Congressional and public review.

(b) While only a Federal agency may propose and conduct a demonstration project, the agency may be assisted in the development and evaluation of the project under contract or agreement with public or private institutions and organizations.

§ 470.305 Submission of proposals for demonstration projects.

(a) OPM will accept project proposals at any time. However, OPM may delay action for a reasonable amount of time on submitted proposals until comparisons can be made with other existing projects or with project proposals of a similar nature not yet received by OPM but known to be under development.

(b) Agencies must submit the project proposal in the form of a project plan to OPM for approval. OPM will prescribe the content of a project plan in its guidance and instructions, which at a minimum will contain the items identified in 5 U.S.C. 4703(b)(1) and 5 CFR 470.301(b).

(c) Agencies will outline, at the time proposed demonstration projects are submitted to OPM for approval, what discussions of the project have been held with labor organizations which have been accorded exclusive recognition for bargaining units containing employees involved in or affected by the proposed demonstration project.

(d) OPM may combine and evaluate similar project proposals received from different agencies as a single project, with the approval of the agencies involved.

§ 470.307 Notification responsibilities.

(a) 5 U.S.C. 4703 requires notification of tentatively approved demonstration project plans to Congress, employees, labor organizations, and the public.

(b) OPM shall:

(1) Notify each House of the Congress 180 days in advance of the beginning of each project; and

(2) Publish each tentatively approved project plan as a notice in the FEDERAL REGISTER.

(c) Each agency having a tentatively approved project plan shall:

(1) Notify and make available copies of the project plan to:

(i) All employees who may be interested in or affected by the activities of the demonstration project; and

(ii) All labor organizations accorded exclusive recognition for bargaining units which include employees in or affected by the project plan.

(2) Certify to OPM in writing when and how the requirements of § 470.307(c)(1) were carried out and document the manner in which it insured that all affected employees were notified.

(3) Observe the consultation and negotiation requirements of 5 U.S.C. 4703 (f) and (g).

§ 470.309 Public hearing.

(a) *Notice of public hearing.* OPM shall hold a public hearing no less than 30 days after the date of its notice in the FEDERAL REGISTER during which interested persons or organizations may present their written or oral views concerning the proposed demonstration project. The notice of public hearing shall be published in the FEDERAL REGISTER and shall:

(1) State the date, time, place and purpose of the hearing;

(2) Describe briefly the project;

(3) Indicate where more information and a copy of the project plan may be obtained;

(4) State the name and address of the person who will receive written comments from those unable to attend the hearing; and

(5) Indicate the date by which written comments must be received to be considered.

(b) *Nature of public hearing.* The hearing will be informal to encourage effective oral presentations by interested individuals and organizations. The presiding officer, designated by the Director, OPM, shall in his or her reasonable discretion regulate the course of the proceedings and the conduct of those present at the hearing by appropriate means.

(c) A written summary shall be made of the oral evidence.

(d) The record shall be left open for 2 weeks after the conclusion of the hearing to receive additional written data, views, and arguments from the parties participating in the hearing.

§ 470.311 Final project approval.

(a) The Office of Personnel Management will consider all timely relevant oral and written views, arguments, and data before final approval or disapproval of a project plan. OPM may request that the agency modify the tentatively approved project plan before final approval because of comments and data received from the Congress, the public, labor organizations, and affected employees. OPM will not permit the agency to implement the project until all required consultation or negotiation has been completed, including the conclusion of impasse resolution and negotiability disputes.

(b) The Office of Personnel Management shall provide a copy of the final version of the project plan to each House of the Congress at least 90 days in advance of the date the project is to take effect.

(c) Agencies involved in the project shall communicate the content of the final project plan to:

(1) Labor organizations and affected employees; and

(2) Individuals and groups known to be interested in the project's activities.

§ 470.313 Project implementation regulations.

Agencies will prepare demonstration project implementing regulations, as appropriate, to replace Government-wide statutes and regulations waived for the project. Demonstration project implementing regulations issued pursuant to an OPM-approved demonstration project must be approved by OPM and shall have full force and authority pursuant to Title VI of the Civil Service Reform Act of 1978.

§ 470.315 Project modification and extension.

OPM-approved projects permit the testing of alternative personnel systems and procedures in accordance with the provisions of the project plan. The provisions of approved project plans will not be modified, duplicated in organizations not listed in the project plan, or extended by agencies to individuals or groups of employees not included in the project plan without the approval of the Office of Personnel Management. OPM will inform the agency of notification responsibilities under § 470.307. The extent of notification requirements will depend on the nature and extent of the requested project modification.

§ 470.317 Project evaluation.

(a) *Compliance evaluation.* OPM will review the operation of the project periodically to determine its compliance with the requirements of this part and the approved project plan. If OPM determines that an agency is not meeting legal, regulatory, or project plan requirements, it may, as appropriate, direct the agency to take corrective action or terminate the project.

(b) *Results evaluation.* All approved project plans will contain an evaluation section to measure the impact of the project results in relation to its objectives and to determine whether or not permanent changes in law and/or regulation should be considered or proposed. Where the project plan provides for agency evaluation of project results, OPM will review those project evaluation efforts, may conduct evaluations of its own, on a sample basis, to verify results, and may report its own conclusions. If OPM or the agency determines that an experiment is creating a substantial hardship on, or is not in the best interest of, the public, the Federal Government, employees, or eligibles, even though the experiment is being conducted properly, OPM or the agency may jointly or unilaterally terminate the project.

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

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Subpart G—Effective Dates of Position; Classification Actions or Decisions

511.701 Effective dates generally.
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AUTHORITY: 5 U.S.C. 5115, 5338, 5351.

SOURCE: 33 FR 12445, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 511.101 Definitions.

In this part:

(a) "Agency" and "employee" have the meanings given them by section 5102 of title 5, United States Code.

(b) "Class" means all positions which are sufficiently similar as to (1) kind or subject-matter of work, (2) level of difficulty and responsibility, and (3) the qualification requirements of the work, to warrant similar treatment in personnel and pay administration.

(c) "Classification" means the analysis and identification of a position and placing it in a class under the position-classification plan established by OPM under chapter 51 of title 5, United States Code.

(d) "Grade" means all classes of positions which (although different with respect to kind or subject-matter of work) are sufficiently equivalent as to (1) level of difficulty and responsibility, and (2) level of qualification requirements of the work, to warrant their inclusion within one range of rates of basic pay.

(e) "Position" means the work, consisting of the duties and responsibilities, assigned by competent authority for performance by an employee.

Subpart B—Coverage of the General Schedule

§ 511.201 Coverage of and exclusions from the General Schedule.

This part and chapter 51 of the title 5, United States Code, apply to all positions in the agencies except those specifically excluded by section 5102 of title 5, United States Code. (5 U.S.C. 5102)

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54693, Sept. 21, 1979]

§ 511.202 Authority of agency.

Subject to the provisions of Subpart F of this part and § 511.203, an agency may determine whether a position is subject to, or is excluded from, chapter 51 of title 5, United States Code, by section 5102(c) (7) and (8) thereof.

§ 511.203 Exercise of authority.

An agency may exercise the authority under § 511.202 only in accordance with guidelines and standards issued by OPM.

Subparts C-E—[Reserved]

Subpart F—Classification Appeals

Source: 46 FR 9913, Jan. 30, 1981, unless otherwise noted.

§ 511.601 Applicability of regulations.

This subpart applies to a request from an employee or an agency for the Office to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Office to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the agency. This includes employees who are eligible for retained grade or pay. If the reclassification is due to an Office classification certificate issued under the authority of 5 U.S.C. 5110, the agency will also explain the reasons for the reclassification action to the employee. This notice shall inform the employee:

(a) Of his or her right to appeal the classification decision to the agency (if the agency has an established appeal system and it has the authority to review the classification decision), or to the Office as provided in this subpart if such an appeal has not already been made;

(b) Of the time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under § 511.703; and

(c) Any other appeal or grievance rights available under applicable law, rule, regulation or negotiated agreement.

§ 511.603 Right to appeal.

(a) *Employee appeal.* An employee, or the employee's designated representative acting on behalf of an employee, may request an Office decision as to:

(1) The appropriate occupational series or grade of the employee's official position.

(2) The inclusion under or exclusion from chapter 51 of title 5, United States Code, of the official position by the employee's agency or the Office, except in the case of a position located in the Office of the Architect of the Capitol.

(b) *Agency appeal.* The head of an agency, or an authorized representative, may appeal any classification certificate issued by the Office under sections 5103 or 5110 of title 5, U.S.C., with respect to any position in the agency.

§ 511.604 Filing an appeal.

(a) *Employee.* An employee may appeal by writing to the Office directly, or by forwarding the appeal through the employing agency.

(b) Referral of an employee appeal to the Office. An agency shall forward, within 60 calendar days of its receipt in the agency, and employee's appeal filed through the agency to the Office when:

(1) The employee has directed the appeal to the Office and the agency's written decision is not favorable; or

(2) The agency is not authorized to act on the employee's appeal; or

(3) The agency has not decided the appeal within the established time period.

§ 511.605 Time limits.

(a) *Employees.* (1) An employee may submit an appeal of his or her official position at any time. If the employee has suffered a loss in grade or pay, is not entitled to retained grade or pay, and desires retroactive adjustments, the time limits in § 511.703 must be observed.

(2) If the employee is appealing an agency decision or an Office classification certificate issued under 5 U.S.C. 5103 or 5110, the employee shall promptly appeal if he or she disagrees with the classification certificate. Employees must meet the time limits provided in § 511.703 in order to preserve the right to retroactive adjustment.

(b) *Agency.* An agency may appeal an Office classification certificate issued under authority of section 5103 or 5110 of title 5, United States Code, at any time. Heads of agencies should appeal prior to the implementation date of the certificate if they disagree with the classification rationale.

(c) *Reconsideration.* An employee or agency may request reconsideration of an Office appellate decision. The request must be in writing, and filed not later than 45 calendar days after the decision is issued. This time limit may be waived under exceptional circumstances by either the Classification Appeals Office or the Director.

§ 511.606 Form and content of an appeal.

(a) *Employee appeal.* An employee's appeal shall be in writing, and shall contain the reasons why the employee believes his or her position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the employee's appeal or when requested by the Office, shall furnish all relevant facts concerning the position and the agency's justification for its classification decision. The agency shall also comment on the information submitted by the employee if requested to do so by the Office. Either the employee or agency may submit relevant information to the Office at any time following the initial filing of an appeal.

(b) *Agency appeal.* An agency's appeal shall be in writing, and shall contain its reasons and justification for requesting a review of the Office's certificate.

(c) *Inspection of the Office's appellate record.* The employee, an employee's representative and the agency will be permitted to inspect the Office's appellate record on request. Agencies will make available to appellants copies of any and all information submitted by the agency to the Office with respect to the appellant's individual appeal.

§ 511.607 Nonappealable issues.

(a) The following issues are not appealable to the Office under this subpart. Such issues may be reviewed under administrative or negotiated grievance procedures if applicable:

(1) The accuracy of the official position description including the inclusion or exclusion of a major duty in the official position description. When

the accuracy of the official position description is questioned by the employee, the employee will be directed to review this matter with his or her supervisor. If management and the employee cannot resolve their differences informally, the accuracy of the position description should be reviewed in accordance with administrative or negotiated grievance procedures. If the accuracy of the position description cannot be resolved in this manner, the Office will decide the appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee;

(2) An assignment or detail out of the scope of normally performed duties as outlined in the official position description;

(3) The accuracy, consistency or use of agency supplemental classification guides; or,

(4) The title of the position unless a specific title is authorized in a published Office classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.

(b) The following issues are neither appealable nor reviewable;

(1) The class, grade, or pay system of a position to which the employee is not officially assigned by an official personnel action;

(2) An agency's proposed classification decision;

(3) The class, grade, or pay system of a position to which the employee is detailed or temporarily promoted; employees serving under term promotions in accordance with § 335.102(g) of this title may appeal the classification of their position to the Office under these procedures.

(4) The classification of the employee's position based on position-to-position comparisons and not standards;

(5) The accuracy of grade level criteria contained in an Office classification guide or standard; or

(6) A classification decision that has been issued by the Office under this subpart when there has been no change in the governing classification standard(s) or the major duties of the position.

§ 511.608 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of an appeal. An agency may disallow an employee's representative when the individual's activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government.

§ 511.609 Ascertainment of facts.

The employee, a designated representative, and the agency shall furnish such facts as may be requested by the Office within the time frames specified. The facts shall be in writing when so requested. The Office, in its discretion, may investigate or audit the position. A representative may not participate in OPM on-site audits unless specifically requested to do so by the Office.

§ 511.610 Notification.

The Office shall notify the employee, or a representative if one is designated, and the agency in writing of its decision.

§ 511.611 Cancellation of an employee appeal.

An employee's appeal shall be cancelled and the employee so notified in writing in the following circumstances:

(a) On receipt of the employee's written request for cancellation.

(b) On failure to prosecute, when the employee or the designated representative does not furnish requested information, or proceed with the advancement of the appeal.

The Office may at its discretion reopen a cancelled appeal on a showing that circumstances beyond the control of the employee prevented pursuing the appeal.

§ 511.612 Finality of decision.

An appellate decision made by the Office is final unless reconsidered by the Office. There is no further right of appeal. The Office may reconsider a decision at its discretion. The decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Agencies shall review their own classification decisions for identical, similar or related positions to insure consistency with the Office's certificate.

§ 511.613 Classification Appeals Office.

The Office's Classification Appeals Office may, at its discretion, reopen and reconsider a certificate issued under this subpart.

(a) The Classification Appeals Office may remand to the respective region of the Office any request for reconsideration which requires extensive fact-finding or investigation. Requests which contain new and material information, or disagreements over the significance of information, will be remanded to the regional deciding official for a decision.

(b) The Classification Appeals Office may reopen and reconsider a decision only when written argument or evidence is presented which establishes a reasonable doubt concerning the technical accuracy of the decision.

§ 511.614 Review by the Director.

The Director may, at his or her discretion, reopen and reconsider any decision when written argument or evidence is submitted which tends to establish that:

(a) The previous decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy:

(b) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director.

§ 511.615 Temporary compliance authority.

Agencies may use temporary or conditional compliance action, e.g., a temporary promotion or a temporary reassignment when available, if:

(a) A position has been certified by the Office under either section 5110 or 5112 of title 5, United States Code;

(b) The certificate has not been suspended; and.

(c) The agency or employee has requested reconsideration.

This authority will not be used if the position has been downgraded and the employee is entitled to retained grade under section 5362 of title 5, United States Code.

§ 511.616 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) the classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

(5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502)

[50 FR 3313, Jan. 24, 1985]

Subpart G—Effective Dates of Position Classification Actions or Decisions

SOURCE: 46 FR 9915, Jan. 30, 1981, unless otherwise noted.

§ 511.701 Effective dates generally.

(a) *Agency classification actions.* (1) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. This is a position action.

(i) The effective date of a position action taken by an agency shall be the date an official with properly delegated authority approves (certifies) the proposed classification. This is accomplished when the authorized official(s) signs the allocation of the position.

(ii) The effective date of a position action may be extended to correspond with the effective date of the personnel action when:

(A) The position is being changed to lower grade or pay; and

(B) The employee occupying the position is eligible for retained grade or pay under 5 U.S.C. 5362-5363.

(iii) These provisions do not pertain to Merit Pay System determinations made under Part 540 of this title.

(2) A position action is implemented by a personnel action. The personnel action must occur within a reasonable period of time following the date of the position action.

(3) If the position action requires a personnel action which will result in a loss of grade or pay to the occupant of the position, the agency must advise the employee, in writing, of the position action and the proposed date of the personnel action. This notice shall be issued prior to taking a personnel action.

(4) Except as provided in § 511.703, classification actions may not be made retroactive.

(b) *Office of Personnel Management's classification decision.* (1) The effective date of a classification decision made by means of a certificate issued under the authority of section 5110, title 5, United States Code is not earlier than the date of the certificate, and not later than the beginning of the fourth pay period following the date of the certificate, unless a subsequent date is specifically stated in the certificate. Except as otherwise provided by this paragraph the filing of an appeal of such a certificate does not delay its effective date.

(2) The implementation of the certificate may be suspended when it is determined before its effective date that a review of the classification decision is warranted and suspension is desirable. The determination to suspend implementation may be made by:

(i) A regional director, or a designee, when the decision is made by the regional office; or,

(ii) The Assistant Director, Agency Compliance and Evaluation, or a designee, when the decision is made within the central office or by a region, or

(iii) The Director with respect to any classification decision.

Suspending the implementation of a certificate does not automatically change the effective date except when the certificate requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay.

(3) When the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to retained grade or pay the reviewing authority shall issue a new certificate if it sustains the original decision. Since demotions cannot be made retroactive, the effective date of the new certificate shall be not earlier than the date of the certificate, and not later than the beginning of the fourth pay period after the date of the certificate unless a subsequent date is specifically stated in the certificate.

§ 511.702 Agency or Office classification appeal decisions.

(a) Subject to § 511.703, the effective date of a change in the classification of a position resulting from a classification appeal decision by either an agency or the Office is not earlier than the date of the decision and not later than the beginning of the fourth pay period following the date of the decision, except when a subsequent date is specifically provided in the decision.

(b) The implementation of the decision may be suspended by the Office when it determines before the effective date that a review of the decision is warranted. The determination to suspend implementation may be made by:

(1) The regional director, or a designee, when the appellate decision is made by an agency under the jurisdiction of the region; or

(2) The Assistant Director, Agency Compliance and Evaluation, or the Chief, Classification Appeals Office when the appellate decision is made within the central office, by a region or by an agency; or

(3) The Director with respect to any appellate decision.

Suspending the implementation does not change the effective date of the decision except when the original decision requires that the grade or pay of the position be reduced and the employee is not entitled to grade or pay retention.

(c) When the original decision requires that the grade or pay position be reduced and the employee is not entitled to grade or pay retention, the reviewing authority, if sustaining the original decision, shall issue a new certificate and the effective date of the new certificate shall be not earlier than the date of the new decision and not later than the beginning of the fourth pay period following the date of the new decision, unless a subsequent date is specifically stated in the new decision.

§ 511.703 Retroactive effective date.

(a) *Applicability.* A retroactive effective date may be required only if the employee is wrongfully demoted.

(b) *Downgrading.* (1) The effective date of a classification appellate certificate or agency appellate decision can be retroactive only if it corrects a classification action which resulted in a loss of grade or pay. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or the Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the appellate decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent appeals from an agency or Office classification decision when the subsequent appeal is filed not later than 15 calendar days following receipt of written notification of a final agency administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

Subparts A-B—[Reserved]

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

Sec.
530.301 Applicability.
530.302 Authority.
530.303 Establishing and adjusting special salary rate schedules.
530.304 Annual review.
530.305 Revising or discontinuing special salary rate schedules.
530.306 Determining employee rates.

AUTHORITY: 5 U.S.C. 5303; E.O. 11721, as amended.

Subparts A-B—[Reserved]

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

SOURCE: 50 FR 32841, Aug. 15, 1985, unless otherwise noted.

§ 530.301 Applicability.

Except as provided in § 530.302(b) of this subpart, this subpart applies to agencies having positions that would otherwise be covered by (a) the General Schedule, under section 5332(a) of title 5, United States Code; (b) the pay scales for certain employees in the Department of Medicine and Surgery of the Veterans Administration, under chapter 73 of title 38, United States Code; and (c) the pay schedules for personnel paid under section 403 of the Foreign Service Act of 1980.

§ 530.302 Authority.

(a) In lieu of the pay schedules identified in § 530.301, the Office of Personnel Management (OPM) may establish, and agencies must pay, special salary rates under section 5303 of title 5, United States Code, Executive Order 11721, and this subpart.

(b) The Veterans Administration may use other authorities to establish and pay special salary rates. Special salary rates may be established for (1) Department of Medicine and Surgery General Schedule employees providing direct patient care or services incident to direct patient care under 38 U.S.C. 4107(g); (2) employees who are Veterans Administration police officers providing services under section 218 of title 38 of the United States Code; and (3) nurses and certain other employees of the Department of Medicine and Surgery appointed under chapter 73 of title 38, United States Code.

§ 530.303 Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in § 530.301 in one or more areas or locations to the extent it considers necessary to overcome significant handicaps in the recruitment and retention of well-qualified personnel when these handicaps result from pay rates in private enterprise that are substantially above the pay rates of those schedules. When a minimum rate is increased under this authority, increases may also be made in one or more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level.

(b) An agency may propose to OPM that special salary rates be established or adjusted. The agency initiating such a request, and all other agencies wishing to be included, are responsible for submitting complete supporting data, as specified by OPM, including, after consulting with OPM, a survey of prevailing pay rates in private enterprise in the relevant labor market.

(c) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency that the special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency's mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. (If the special salary rate request covers fewer that 200 employees and would increase annual salary costs by less than $200,000, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.)

(d) In establishing or adjusting special salary rate schedules, OPM considers—

(1) The number of vacant positions and the length of time they have been vacant;

(2) The number of employees who have quit, including the number quitting for higher paying positions in private enterprise;

(3) The number of vacancies the agency tried to fill compared with the number of hires and offers made;

(4) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an adequate recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(5) The impact of the staffing problem on the agency's mission; and

(6) The level of rates paid by private enterprise for comparable positions.

(e) In determining at what level to set special salary rates, OPM considers—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of rates paid by private enterprise for comparable positions.

(f) No one factor or combination of factors specified in paragraphs (d) or (e) of this section requires special salary rate schedules to be established or to be adjusted to any given level. Each agency request to establish or adjust special salary rate schedules is judged on its own merits based on the extent to which it meets the criteria specified in paragraphs (c) and (d) of this section.

[50 FR 32841, Aug. 15, 1985, as amended at 51 FR 11007, Apr. 1, 1986; 51 FR 23036, June 25, 1986]

§ 530.304 Annual review.

(a) OPM reviews special salary rate schedules annually to determine whether there is a continuing need for them.

(b) In conducting the annual review, OPM will designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(c) An adjustment in a pay schedule identified in § 530.301 has no effect on special salary rate schedules authorized under this subpart. However, except for an employee receiving a rate of basic pay under Part 540 of this chapter, a special salary rate may not be less than the rate for the corresponding numerical step or rate in the regular rate range for the grade or level involved.

[50 FR 32841, Aug. 15, 1985, as amended at 51 FR 11007, Apr. 1, 1986; 51 FR 23036, June 25, 1986]

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory recruitment and retention. No employee's pay shall be reduced because of such discontinuation or revision.

[50 FR 40178, Oct. 1, 1985, as amended at 51 FR 11007, Apr. 1, 1986; 51 FR 23036, June 25, 1986]

§ 530.306 Determining employee rates.

(a) *Initial establishment and increases.* (1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the special salary rate schedule is increased, the agency shall fix the employee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay as follows:

(i) If the employee is retaining a rate under Part 536 of this chapter or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(ii) If the employee is retaining a rate under an authority other than Part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee covered by the Performance Management and Recognition

System, the employee's rate of basic pay shall be determined under § 540.106.

(b) *Decreased and discontinued rates.* (1) Except as provided in paragraph (b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the higher of the two rates.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in § 536.104(a)(3).

(2) If the employee is receiving a rate of basic pay established under Part 540 of this chapter, the employee shall receive his or her existing rate. This rate may be lower than the minimum rate of the regular schedule as provided in § 540.106(c)(3). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3).

(c) *Initial appointments.* (1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in § 531.203(d)(3).

(d) *General exception.* Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) *Reassignments and transfers.* When an employee is reassigned or transferred at the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) *Promotions.* When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) *Reductions in grade.* When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower grade without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which reduced.

[50 FR 40178, Oct. 1, 1985]

PART 531—PAY UNDER THE GENERAL SCHEDULE

Subpart A—[Reserved]

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531.508 Reports and evaluation of quality step increase authority.

AUTHORITY: 5 U.S.C. 5115, 5338, and Chapter 54; Subpart B also issued under 5 U.S.C. 5305(q), 5333(a), 5334(a), 5402, and section 203 of E.O. 11721, as amended; Subpart C also issued under 5 U.S.C. 5333(b) and section 404 of E.O. 11721, as amended; Subpart D also issued under 5 U.S.C. 5301, 5335, and section 402 of E.O. 11721, as amended; Subpart E also issued under 5 U.S.C. 5336 and section 403 of E.O. 11721, as amended.

SOURCE: 33 FR 12448, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Determining Rate of Basic Pay

SOURCE: 45 FR 65498, Oct. 3, 1980, unless otherwise noted.

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5 applies, including employees under the Performance Management and Recognition System (PMRS) established under chapter 54 of title 5, United States Code.

[50 FR 35498, Aug. 30, 1985]

§ 531.202 Definitions.

In this subpart:

(a) "Demotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a lower General Schedule grade, with or without reduction in pay; or

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

(b) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(c) "Employee" means an employee of an agency to whom this subpart applies.

(d) "Existing rate of basic pay" means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

(e) "Higher grade" means a General Schedule grade above the last previous

General Schedule grade or its equivalent held by the employee.

(f) "Highest previous rate" means—

(1) The highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial); a Government corporation, as defined in 5 U.S.C. 103; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia (except as provided in § 531.203(d)(2)(v) of this part); without regard to whether the position was subject to the General Schedule; or

(2) The actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the General Schedule.

(g) "New appointment" means the first appointment, regardless of tenure, as an employee of the Federal Government or the Government of the District of Columbia.

(h) "Promotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a higher General Schedule grade; or

(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

(i) "Rate of basic pay" means the ate of pay fixed by law or administra- ive action for the position held by an mployee before any deductions and xclusive of additional pay of any ind.

(j) "Reassignment" means a change f an employee, while serving continu- usly in the same agency, from one po- ition to another without promotion r demotion.

(k) "Reemployment" means an em- loyment, including reinstatement or nother type of appointment, after a reak in service of at least 1 full work- ay.

(l) "Transfer" means a change of an nployee, without a break in service 1 full workday, from one branch of e Federal Government (executive, gislative, or judicial) to another or om one agency to another.

[45 FR 65498, Oct. 3, 1980, as amended at 55 FR 14829, Apr. 19, 1990]

§ 531.203 General provisions.

(a) *New Appointments.* Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under Part 530 of this chapter, a new appointment is made at the minimum rate set under Part 530 of this chapter.

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment to a position in Grade 11 or above of the General Schedule made at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate. Prior approval of OPM is required if the proposed rate exceeds the candidate's existing pay by more than 20 percent (unless the position is in the Library of Congress).

(2) An agency may make a superior qualifications appointment by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the Government of the District of Columbia (other than (i) employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code, (ii) employment under a temporary appointment effected primarily in furtherance of a post-doctoral research program, or effected as part of predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree, (iii) employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of Public Health Service, (iv) employ-

ment which is neither full-time employment nor the principal employment of the candidate, or (v) appointment under the Intergovernmental Personnel Act.)

(c) *Maximum payable rate rules.* In determining an employee's rate of basic pay upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of 5 U.S.C. 5334(b) and 531.204(a) of this part or the grade and pay retention provisions of 5 U.S.C. 5362 and 5363 and part 536 of this chapter:

(1) *For non-PMRS employees.* The maximum rate of basic pay that may be paid an employee *not* covered by the Performance Management and Recognition System shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Identify the lowest step of the grade in which pay is currently being fixed, for which the rate of basic pay was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned.

(iii) Identify the current rate of basic pay for the step identified under paragraph (c)(1)(ii) of this section. This rate is the maximum rate of basic pay that may be paid the employee.

(2) *For PMRS employees.* The maximum rate of basic pay that may be paid an employee covered by the Performance Management and Recognition System shall be determined as follows. Compare the employee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed. If the employee's highest previous rate was less than or equal to the minimum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the minimum rate for the grade in which pay is being fixed. If the employee's highest previous rate was equal to or greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the maximum rate for that grade. If the employee's highest previous rate was greater than the minimum rate, but less than the maximum rate for the grade in which pay is being fixed, the maximum payable rate shall be determined as follows:

(i) Using the pay rates in effect at the time the highest previous rate was earned for the grade in which pay is being fixed, find the difference between the employee's highest previous rate and the minimum rate for that grade—(a). Find the difference between the maximum rate and the minimum rate for the same grade—(b). Divide (a) by (b); carry the result to the seventh decimal place; and truncate, rather than round, the result. This quotient—(c)—is a factor representing the employee's relative position in the rate range.

(ii) Using current pay rates, find the difference between the maximum rate and the minimum rate for the grade in which pay is being fixed—(d). Multiply (d) times the factor (c). Add the product of this multiplication to the minimum rate for the grade in which pay is being fixed. This figure, rounded to the next higher whole dollar, is the maximum rate of basic pay that may be paid the employee.

(d) *Basis for highest previous rate.* (1) Except as otherwise provided in this paragraph, the highest previous rate may be based on a regular tour of duty at any rate of basic pay received by an individual while serving under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on the following:

(i) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(ii) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;

(iii) A rate received in a position from which the employee was reassigned or reduced in grade for failure to complete satisfactorily a probationary period as a supervisor or manager;

(iv) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(v) A rate received by an employee of the government of the District of Columbia who was first employed by that government on or after October 1, 1987; or

(vi) A special rate established under 5 U.S.C. 5303 and part 530 of this chapter; § 532.231 of this chapter; or other legal authority; unless, in a reassignment to another position in the same agency—

(A) The special rate of pay is the employee's current rate of basic pay; and

(B) An agency official specifically designated to make such determinations finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case the agency shall make a written record of its positive determination to use the special rate as an employee's highest previous rate.

(3) In the case of an employee who has received or is receiving a special rate established under 5 U.S.C. 5303 and part 530 of this chapter, § 532.231 of this chapter, or other legal authority; who is placed in a position in which a special rate does not apply; and for whom the special rate is *not* used as the highest previous rate under paragraph (d)(2)(vi) of this section; the highest previous rate may be based on the rate of basic pay for the step (or relative position) in the regular rate range that corresponds to the employee's existing step (or relative position) in the special rate range for the employee's current grade or pay level.

(e) *Agency classification action.* When an agency regrades a position to a grade higher than the one to which the position had been classified by Office action, and when subsequent to the regrading, the Office again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his or her highest previous rate.

(f) *Simultaneous actions.* When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed an employee's existing rate of basic pay. If an employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit.

[45 FR 65498, Oct. 3, 1980, as amended at 46 FR 43823, Sept. 1, 1981; 50 FR 11794, Mar. 25, 1985; 50 FR 35495, 35499, Aug. 30, 1985; 53 FR 34274, Sept. 6, 1988; 55 FR 14829, Apr. 19, 1990]

§ 531.204 Special provisions.

(a) *Promotions and transfers.* (1) The requirements of section 5334(b) of title 5, United States Code, apply only to an employee who is promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule.

(2) In determining an employee's rate of basic pay in the grade of his or her position upon promotion to or from a position in which he or she is covered by the Performance Management and Recognition System, established under chapter 54 of title 5, United States Code, the following rules apply unless the employee is receiving a retained rate under section 5363 of title 5, United States Code, or Part 536 of this chapter:

(i) When an employee not covered by the Performance Management and Recognition System is promoted from a position in one grade of the General Schedule to a position in a higher grade of the Performance Management and Recognition System, the agency shall pay the employee at that rate of basic pay within the rate range of the grade to which promoted that is equal to the rate of basic pay the employee would have been entitled to receive if the promotion had been to a General Schedule position in which he or she was not covered by the Performance Management and Recognition System.

(ii) When an employee is promoted from a position in one grade of the Performance Management and Recognition System to a position in a higher grade of the Performance Management and Recognition System, the agency shall pay the employee at the lowest whole-dollar rate of basic pay within the rate range of the grade to which promoted that exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(iii) When an employee is promoted from a position in one grade of the Performance Management and Recognition System to a position in a higher grade of the General Schedule in which he or she is not covered by the Performance Management and Recognition System, the agency shall pay the employee at the rate of basic pay for the lowest step of the grade to which promoted, for which the rate of basic pay exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(3) For the purpose of section 5334(b) of title 5, United States Code, an employee's "existing rate of basic pay" includes a special rate established under section 5303 of title 5, United States Code.

(b) *Classification decisions.* When a classification decision is made effective retroactively under Part 511 of this chapter, the agency shall treat the corrective personnel action affecting the employee concerned as a cancellation or correction, as the case may be, of the original action of demotion, and the employee is entitled to retroactive pay in accordance with the terms of the corrective action.

(c) *Pay adjustment on acquiring PMRS status.* Except as provided in paragraph (e) of this section, when an employee acquires PMRS status, the employee shall receive his or her existing rate of basic pay plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any statutory adjustment in the General Schedule made on that date, or in the case of an employee subject to special pay rates, the amount of any adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any within-grade or quality step increase to which the employee otherwise would be entitled on that date; and

(3) The amount resulting from a promotion effective on that date.

(d) *Pay adjustment on loss of PMRS status.* Except as provided in paragraph (e) of this section, when an employee loses PMRS status, the employee shall receive his or her existing rate of basic pay, plus any of the following adjustments that may be applicable, in the order specified:

(1) The amount of any general pay increase under section 5403 of title 5, United States Code, and § 540.106 of this chapter to which the employee otherwise would be entitled on that date, or in the case of an employee subject to special pay rates, the amount of any pay adjustment made on that date under section 5303 of title 5, United States Code, and Part 530 of this chapter;

(2) The amount of any merit increase under section 5404 of title 5, United States Code, and § 540.107 of this chapter to which the employee otherwise would be entitled on that date;

(3) The amount resulting from a promotion effective on that date;

(4) In the case of an employee whose resulting rate of basic pay falls between two steps of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, between the two steps of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the rate for the next higher step of that grade (or special rate range); and

(5) In the case of an employee whose resulting rate of basic pay falls below the minimum rate of a General Schedule grade (or, in the case of an employee whose position is subject to special pay rates, below the minimum of the applicable special rate range), the amount of any increase that may be necessary to pay the employee the

ninimum rate for that grade (or spe-
ial rate range).

(e) *Special exceptions.* Paragraphs
c) and (d) (1) through (4) of this sec-
ion do not apply to an employee who
cquires or loses PMRS status as the
esult of—

(1) An action taken for disciplinary
r performance related reasons, or

(2) The expiration or termination of
temporary promotion.

5 FR 65498, Oct. 3, 1980, as amended at 47
R 30229, July 13, 1982; 50 FR 11794, Mar.
, 1985; 50 FR 35494, 35499, Aug. 30, 1985;
FR 40179, Oct. 1, 1985]

531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5305.

(a) On the effective date of a pay ad-
stment under 5 U.S.C. 5305, the rate
basic pay of an employee subject to
e General Schedule shall be initially
justed, except as provided in para-
aph (b) of this section, as follows:

1) If an employee is receiving basic
y immediately before the effective
te of his pay adjustment at one of
e rates of a grade in the General
hedule, he shall receive the rate of
sic pay for the corresponding nu-
rical rate of the grade in effect on
d after such date.

2) If an employee is receiving basic
y immediately before the effective
e of his or her pay adjustment at a
e determined under chapter 54 of
e 5, United States Code, and part
of this chapter, the employee shall
e his or her rate of basic pay ad-
ted under section 5403 of that title
§ 540.106 of this chapter.

) Except as provided in 5 U.S.C.
3 and Part 536 of this chapter, if
employee is receiving basic pay im-
diately before the effective date of
or her pay adjustment at a rate in
ess of the maximum rate of his or
grade, the employee shall receive
or her existing rate of basic pay in-
sed by the amount of increase
le by the pay adjustment under 5
.C. 5305 in the maximum rate for
employee's grade.

) If an employee, immediately
re the effective date of his pay ad-
ment, is receiving, pursuant to sec-
2(b)(4) of the Federal Employees
ry Increase Act of 1955, an existing aggregate rate of pay determined under section 208(b) of the Act of September 1, 1954 (68 Stat. 1111), plus subsequent increases authorized by law, he shall receive an aggregate rate of pay equal to the sum of his existing aggregate rate of pay on the day preceding the effective date of his adjustment, plus the amount of increase made by the pay adjustment under 5 U.S.C. 5305 in the maximum rate of his grade, until (i) he leaves his position, or (ii) he is entitled to receive aggregate pay at a higher rate by reason of the operation of any provision of law; but, when this position becomes vacant, the aggregate rate of pay of any subsequent appointee thereto shall be fixed in accordance with applicable provisions of law. Subject to paragraph (a)(4) (i) and (ii) of this section, the amount of the increase authorized by this section shall be held and considered for the purposes of section 208(b) of the Act of September 1, 1954, to constitute a part of the existing rate of pay of the employee.

(b) Rates of basic pay authorized under section 5303 of title 5, United States Code, paid to an employee subject to the General Schedule shall not be adjusted by reason of a pay adjustment under 5 U.S.C. 5305.

[45 FR 65498, Oct. 1980, as amended at 50 FR 35499, Aug. 30, 1985]

Subpart C—Pay Adjustments for Supervisors

SOURCE: 45 FR 65500, Oct. 3, 1980, unless otherwise noted.

§ 531.301 Authority of agency.

This subpart authorizes an agency to make a special adjustment in the pay of a supervisor in a General Schedule position who regularly has responsibility for supervision over one or more prevailing rate employees. In making this pay adjustment, an agency is governed by 5 U.S.C. 5333(b) and this subpart.

§ 531.302 Definitions.

In this subpart:

(a) "Prevailing rate employee" means an employee whose pay is fixed and adjusted from time to time by a wage board or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates or in accordance with prevailing rates and practices in the maritime industry.

(b) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

§ 531.303 Use of authority.

In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the prevailing rate employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between the supervisor and the prevailing rate employee supervised by him/her.

§ 531.304 Requirements for entitlement.

(a) *Basic.* Before an agency may adjust the pay of a supervisor under section 5333(b) of title 5, United States Code, and this subpart, it must find that (1) the supervisor regularly has responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one or more prevailing rate employees, and (2) the rate of basic pay for the supervisor is less than the rate of basic pay for the prevailing rate employee supervised by him/her.

(b) *Regular responsibility.* A supervisor regularly has responsibility for supervision when this responsibility is a continuing assignment as reflected in his/her official position description.

(c) *Responsibility for supervision.* A supervisor has responsibility for supervision (including supervision over the technical aspects of the work concerned) when he/she has relatively frequent personal contact with the prevailing rate employees in the unit in connection with assigned work and when he/she personally or through an intermediate prevailing rate supervisor.

(1) Determines assignments or duties for individual prevailing rate employees;

(2) Makes reviews of work products of individual prevailing rate employees when the reviews require a substantial subject matter or technical knowledge;

(3) Plans and organizes work with primary emphasis on distribution of assignments, workloads of individual prevailing rate employees, work item priorities, and schedules for timely completion of work items, projects or cases;

(4) Provides advise, assistance, counsel, or instructions to individual prevailing rate employees;

(5) Evaluates the performance of individual prevailing rate employees; and

(6) Serves as the focal point for discussion of problems arising from, or associated with, specific work products of the unit.

(d) *Rate of basic pay.* (1) In comparing the rate of basic pay for a supervisor with the rate of basic pay for a prevailing rate employee supervised by him/her, an agency shall exclude from the prevailing rate employee's rate (i) any irregular prevailing rate, such as a retained rate not related to his/her current position, and (ii) night and environmental differentials.

(2) When an agency excludes an irregular prevailing rate for the prevailing rate employee from comparison, the agency shall consider the highest rate of the regular prevailing rate for the position occupied by the prevailing rate employee.

§ 531.305 Adjustment of rates.

(a) *Rate payable to supervisor.* (1) Except as provided in paragraph (a)(2) of this section, when an agency decides to adjust the rate of pay for a supervisor under 5 U.S.C. 5333(b) and this subpart, it shall adjust his or her rate of pay as follows:

(i) A supervisor who occupies a position not covered by the Performance Management and Recognition System shall have his or her rate of pay adjusted to the nearest rate, but not above the maximum rate, of his or her grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision.

(ii) A supervisor who occupies a position covered by the Performance Management and Recognition System shall have his or her rate of pay adjusted to any dollar amount of the appropriate grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision. However, the adjusted rate shall not exceed the rate of basic pay of the prevailing rate employee by more than 3 percent and shall not exceed the maximum rate of basic pay of the supervisor's grade.

(2) When a supervisor is in an area in which he/she receives a cost-of-living allowance or post differential based on hardship, and the prevailing rate employee he/she supervises does not receive a separately stated cost-of-living allowance or post differential, the agency shall add to the supervisor's rate of basic pay his/her cost-of-living allowance or post differential and use the total to adjust his/her rate of pay under paragraph (a)(1) of this section.

(b) *Documentation.* The agency shall record the basis for the determination of the supervisor's adjusted rate in his/her Official Personnel Folder.

(c) *Effective date.* The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart.

(d) *Equivalent increase.* An adjustment in pay under section 5333(b) of title 5, United States Code, and this subpart is an equivalent increase in pay under section 5335 of title 5, United States Code.

[45 FR 65500, Oct. 3, 1980, as amended at 50 FR 35499, Aug. 30, 1985]

Subpart D—Within-Grade Increases

SOURCE: 46 FR 2319, Jan. 9, 1981, unless otherwise noted.

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) Section 2301(b)(3) of title 5, United States Code, provides in part that "appropriate incentives and recognition should be provided for excellence in performance."

(b) Section 5301(a)(2) of title 5, United States Code, provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Sevice Commission (Office of Personnel Management) shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

[51 FR 8419, Mar. 11, 1986]

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid at less than the maximum step of their grades.

(b) This subpart does not apply to:

(1) Employees who are covered by the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) Members of the Senior Executive Service established under subchapter II of chapter 31 of title 5, United States Code;

(3) Individuals appointed by the President, by and with the advice and consent of the Senate; and

(4) Employees of the government of the District of Columbia.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 35499, Aug. 30, 1985]

§ 531.403 Definitions.

In this subpart:

Acceptable level of competence means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

Agency means an agency defined in section 5102 of title 5, United States Code.

Calendar week means a period of any seven consecutive calendar days.

Critical Element has the meaning given that term in § 430.203 of this chapter.

Employee means an employee of an agency.

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step occupied by the employee and the rate of pay for the next higher step of that grade.

Permanent position means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Scheduled tour of duty means any work schedule established for an employee in accordance with the regular procedures for the establishment of workweeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour workweek. For a part-time employee this is any regularly scheduled work of less than 40-hours during the administrative workweek.

Waiting period means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

Within-grade increase means a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart. The term "within-grade increase" is synonymous with the term "step-increase" used in section 5335 of title 5, United States Code.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 48 FR 49486, Oct. 25, 1983; 51 FR 8420, Mar. 11, 1986]

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

(a) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record as defined in the agency Performance Management Plan, must be at least level 3 ("Fully Successful").

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determination for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.

[51 FR 8420, Mar. 11, 1986]

§ 531.405 Waiting periods for within-grade increase.

(a) Length of waiting period. (1) For an employee with a scheduled tour of duty the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3, and 4—52 calendar weeks of creditable service;

(ii) Steps 5, 6 and 7—104 calendar weeks of creditable service; and

(iii) Steps 8, 9, and 10—156 calendar weeks of creditable service.

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3 and 4—260 days of creditable service in a pay status over a period of not less than 52 calendar weeks;

(ii) Steps 5, 6 and 7—520 days of creditable service in a pay status over a period of not less than 104 calendar weeks; and

(iii) Steps 8, 9, and 10—780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) Commencement of a waiting period. A waiting period begins;

(1) On the first appointment as an employee of the Federal Government, regardless of tenure;

(2) On receiving an equivalent increase; or

(3) After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under § 531.406 of this subpart.

(c) A waiting period is not interrupted by non-workdays intervening between an employee's last scheduled workday in one position and his or her first scheduled workday in a new position.

§ 531.406 Creditable service.

(a) *General.* Civilian employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; and service under a temporary or term appointment. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one within-grade increase.* (1) Military service as defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year.

(2) Time in a nonpay status is creditable service in the computation of a waiting period for an employee with a scheduled tour of duty when it does not exceed an aggregate of:

(i) Two workweeks in the waiting period for steps 2, 3, and 4;

(ii) Four workweeks in the waiting period for steps 5, 6, and 7; and

(iii) Six workweeks in the waiting period for steps 8, 9, and 10.

Except as provided in paragraph (c) of this section, time in a nonpay status in excess of the allowable amount shall extend a waiting period by the excess amount.

(c) *Service creditable for succesive within-grade increases.*

(1) A leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is creditable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;

(ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee is performing service that is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371-3376 of title 5, United States Code.

(2) The period from the date of an employee's separation from Federal service with a restoration or reemployment right granted by law, Executive order, or regulation to the date of restoration or reemployment with the Federal Government through the exercise of that right is creditable service in the computation of waiting periods for successive within-grade increases.

(3) The period during which a separated employee is in receipt of injury compensation under subchapter I of chapter 81 of title 5, United States Code, as a result of an injury incurred by the employee in the performance of duty is creditable service in the computation of waiting periods for successive within-grade increases when the employee is reemployed with the Federal Government.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 46 FR 43371, Aug. 28, 1981; 46 FR 45747, Sept. 15, 1981]

§ 531.407 Equivalent increase determinations.

(a) *Multiple increases.* When an employee receives more than one increase in his or her rate of basic pay during a waiting period, no one of which is an equivalent increase, the first and subsequent increases during the waiting period shall be added together until they amount to an equivalent increase, at which time the employee shall be deemed to have received an equivalent increase.

(b) *Position change.* When an employee changes positions without receiving an equivalent increase, or when an individual not covered by this subpart moves to a position in which he or she is covered by this subpart without receiving an equivalent increase, he or she shall be deemed to have received his or her last equivalent increase—

(1) At the time of the last equivalent increase in the prior position; or

(2) At the time he or she was deemed to have received an equivalent increase in the prior position under paragraph (a) of this section, if that is later.

(c) *Increases in pay not considered equivalent increases.* An increase in an employee's rate of basic pay shall not be considered an equivalent increase when it results from the following:

(1) A statutory pay adjustment, including a general pay increase made under section 5403 of title 5, United States Code, but not including a merit increase made under section 5404 of that title;

(2) The periodic adjustment of a wage schedule or the application of a new pay or evaluation plan under the Federal Wage System;

(3) The establishment of higher minimum rates under section 5303 of title 5, United States Code, or an increase in such rates;

(4) A quality step increase under section 5336 of title 5, United States Code, and Subpart E of this part;

(5) A temporary or term promotion when returned to the permanent grade and step; and

(6) An increase resulting from placement of an employee in a supervisory or managerial position who does not satisfactorily complete a probationary period established under section 3321(a)(2) of title 5, United States Code, and is returned to a position at the same grade and step held by the employee before such placement.

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of, or a zero merit increase, made under section 5404 of title 5, United States Code, and § 540.107 of this chapter is an equivalent increase.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 35499, Aug. 30, 1985]

§ 531.408 Communication of performance requirements.

(a) The head of the agency or other designated agency official shall determine the specific requirements for performance at an acceptable level of competence.

(b) Employees covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by means of communication of performance standards established under Part 430, Subpart B of this chapter.

(c) Employees not covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

[46 FR 2319, Jan. 9, 1981, as amended at 51 FR 8420, Mar. 11, 1986]

§ 531.409 Acceptable level of competence determinations.

(a) *Responsibility.* The head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence.

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. chapter 43 and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade because of "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the gency, a rating of record at the lower grade shall be used as the basis for an cceptable level of competence determination.

(c) *Delay in determination.* (1) An cceptable level of competence determination must be delayed when either of the following applies:

(i) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within 90 days before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period of time established by the agency to demonstrate acceptable performance.

(2) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and the rating period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made upon completion of the minimum appraisal period established by the agency performance appraisal plan and shall be based on the employee's rating of record completed at the end of the appraisal period.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(1) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer for which no rating has been prepared; or

(5) Because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

(e) *Notice of determination.* (1) A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

(2) When the head of an agency or his or her designee determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

(ii) Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.

[46 FR 2319, Jan. 9, 1981, as amended at 51 FR 8420, Mar. 11, 1986]

§ 531.410 Reconsideration of a negative determination.

(a) When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of title 5, United States Code for reconsideration of the negative determination:

(1) An employee or an employee's personal representative may request reconsideration of a negative determination by filing, not more than 15 days after receiving notice of determination, a written response to the negative determination setting forth the reasons the agency shall reconsider the determination;

(2) When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

(i) the written negative determination and the basis therefore;

(ii) the employee's written request for reconsideration;

(iii) the report of investigation when an investigation is made;

(iv) the written summary or transcript of any personal presentation made; and

(v) the agency's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his or her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation;

(3) An employee in a duty status shall be granted a reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination; and

(4) The agency shall provide the employee with a prompt written final decision.

(b) The time limit to request a reconsideration may be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.

(c) An agency may disallow as an employee's personal representative an individual whose activities as a representative would cause a conflict of interest of position, an employee whose release from his or her official duties and responsibilities would give rise to unreasonable costs to the Government, or an employee whose priority work assignment precludes his or her release from official duties and responsibilities. Section 7114 of title 5,

United States Code, and the terms of
any applicable collective bargaining
agreement govern representation for
employees in an exclusive bargaining
unit.

(d) When a negative determination
s sustained after reconsideration, an
employee shall be informed in writing
of the reasons for the decision and of
is or her right to appeal the decision
o the Merit Systems Protection
Board. However, for an employee cov-
ered by a collective bargaining agree-
nent a reconsideration decision that
ustains a negative determination is
nly reviewable in accordance with the
erms of the agreement.

46 FR 2319, Jan. 9, 1981, as amended at 50
R 45389, Oct. 31, 1985]

531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has
een withheld, an agency may, at any
me thereafter, prepare a new rating
f record for the employee and grant
ne within-grade increase when it de-
ermines that he or she has demon-
rated sustained performance at an
cceptable level of competence. How-
ver, the agency shall determine
hether the employee's performance
at an acceptable level of competence
fter no more than 52 calendar weeks
ollowing the original eligibility date
r the within-grade increase and, for
long as the within-grade increase
ontinues to be denied, determinations
ill be made after no longer than each
calendar weeks.

1 FR 8421, Mar. 11, 1986]

31.412 Effective date of a within-grade increase.

a) Except as provided in paragraph
) of this section, a within-grade in-
ease shall be effective on the first
y of the first pay period following
mpletion of the required waiting
riod and in compliance with the con-
ions of eligibility.

b) When an acceptable level of com-
ence is achieved at some time after
egative determination, the effective
e is the first day of the first pay
iod after the acceptable determina-
n has been made.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981]

§ 531.413 Reports and evaluation of within-grade increase authority.

(a) *Reports.* The Office of Personnel Management may require agencies to maintain records and report on the use of the authority to grant or withhold within-grade increases.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant or withhold within-grade increases. An agency shall take any corrective action required by the Office.

Subpart E—Quality Step Increases

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases, and to carry out section 403 of Executive Order 11721, as amended, which requires the Office to issue regulations and assist agencies in establishing plans for the administration of this section of law.

[46 FR 2322, Jan. 9, 1981]

§ 531.502 Definitions.

Agency means an agency defined in section 5102 of title 5, United States Code.

Employee means an employee of an agency.

Quality step increase means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with section 5336 of title 5, United States Code, and this subpart. The term "quality step increase" is synonymous with the term "step increase" used in section 5336 of title 5, United States Code.

[46 FR 2322, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981]

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

[51 FR 8421, Mar. 11, 1986]

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a rating of record at level 5 (Outstanding), as defined in Part 430, Subpart B, of this chapter.

[51 FR 8421, Mar. 11, 1986]

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

[51 FR 8421, Mar. 11, 1986]

§ 531.506 Effective date of quality step increase.

A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved. The quality step increase should be made effective as soon as possible after it is approved.

[51 FR 8421, Mar. 11, 1986]

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases in the agency's Performance Management Plan, as required by Part 430, Subpart A of this chapter. The Plan shall—

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with the requirements in Part 430, Subpart A of this chapter;

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level; and

(e) Provide for appropriate training and information to all employees on QSI's and establish methods and procedures to evaluate periodically the effectiveness of the use of QSI's, and to implement improvements as needed.

[51 FR 8421, Mar. 11, 1986]

§ 531.508 Reports and evaluation of quality step increase authority.

(a) *Reports.* The Office of Personnel Management shall require agencies to maintain records and report, in accordance with established procedures, on the use of the authority to grant quality step increases.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

[46 FR 2322, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981. Redesignated at 48 FR 49487, Oct. 25, 1983]

PART 532—PREVAILING RATE SYSTEMS

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ec.
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AUTHORITY: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

SOURCE: 46 FR 21344, Apr. 10, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 532.101 Scope.

This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent with the public interest in accordance with prevailing rates.

§ 532.103 Coverage.

The provisions of this part shall apply to prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

§ 532.105 *Pay-fixing* authority.

The head of each agency shall authorize application of the rates established by the lead agency or the Office of Personnel Management (OPM) to prevailing rate employees within the appropriate wage area, in accordance with the provisions of this part.

Subpart B—Prevailing Rate Determinations

§ 532.201 Definitions.

For the purposes of this part:

Full-scale survey means a survey conducted at least every 2 years in which data are collected from a current sampling of establishments in the private sector by personal visit of data collectors.

Host activity is the local Federal activity designated by the lead agency to obtain employment statistics from other Federal activities in the wage area and to provide support facilities and clerical assistance for the wage survey.

Lead agency means the agency designated by the Office of Personnel Management to plan and conduct wage surveys, analyze wage survey data, and determine and issue required wage schedules for a wage area.

Survey area means that part of the wage area where the private enterprise establishments included in the wage survey are located.

Wage area means that geographic area within which a single set of regular wage schedules is applied uniformly by Federal installations to covered occupations.

Wage change survey means a survey in which rate change data are collected from the same establishments and for the same establishment occupations represented in the full-scale survey. These data may be collected by telephone, mail, or personal visit.

§ 532.203 Structure of regular wage schedules.

(a) Each nonsupervisory and leader regular wage schedule shall have 15 grades, which shall be designated as follows:

(1) "WG" means an appropriated fund nonsupervisory grade;

(2) "WL" means an appropriated fund leader grade;

(3) "NA" means a nonappropriated fund nonsupervisory grade; and

(4) "NL" means a nonappropriated fund leader grade.

(b) Each supervisory regular wage schedule shall have 19 grades, which shall be designated as follows:

(1) "WS" means an appropriated fund supervisory grade; and

(2) "NS" means a nonappropriated fund supervisory grade.

(c) The step 2 or payline rate for each grade of a leader regular wage schedule shall be equal to 110 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area.

(d) The step 2 or payline rate for each grade of an appropriated fund supervisory regular wage schedule shall be:

(1) For grades WS-1 through WS-10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 30 percent of the rate for step 2 of WG-10;

(2) For grades WS-11 through WS-18, the second rate of WS-10, plus 5.

11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS-10 and WS-19; and

(3) For grade WS-19, the third rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment. The WS-19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

(e) The step 2 or payline rate for each grade of a nonappropriated fund supervisory regular wage schedule shall be:

(1) For grades NS-1 through NS-8, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 20 percent of the rate for step 2 of NA-8;

(2) For grades NS-9 through NS-15, equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area;

(3) For grades NS-16 through NS-19, the rates will be 25, 30, 35 and 40 percent, respectively, above the step 2 rate of NA-15;

(f) The number of within-grade steps and the differentials between steps for each nonsupervisory grade on a regular wage schedule shall be established in accordance with 5 U.S.C. 5343(e)(1). Each grade on a leader and supervisory regular wage schedule shall have 5 within-grade steps with step 2 set according to paragraphs (c), (d), or (e) of this section, as appropriate, and—

(1) Step 1 set at 96 percent of the step 2 rate;

(2) Step 3 set at 104 percent of the step 2 rate;

(3) Step 4 set at 108 percent of the step 2 rate; and

(4) Step 5 set at 112 percent of the step 2 rate.

46 FR 21344, Apr. 10, 1981, as amended at 8 FR 13385, Mar. 30, 1983; 49 FR 28347, uly 11, 1984; 55 FR 46140, Nov. 1, 1990]

532.205 The use of Federal, State and local minimum wage requirements in determining prevailing rates.

(a) Wage schedules, including special chedules, shall not include any rates f pay less than the higher of:

(1) The minimum rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, or

(2) The highest State or local minimum wage rate in the local wage area which is applicable to the private industry counterparts of the single largest Federal industry/occupation in the wage area.

(b) Wage data below the minimum wage rates prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, shall not be used in determining prevailing rates.

(c) Adjustments to regular wage schedules to comply with the minimum wage rate determined to be applicable under paragraph (a) of this section shall be computed as follows:

(1) The step 2 rate of grade 1 of the nonsupervisory wage schedule shall be set at a rate which, upon application of the 4 percent step-rate differential, provides a step 1 rate which is equal to the applicable minimum wage rate.

(2) An intergrade differential shall be determined as 5 percent of the rate established as the step 2 rate of grade 1, rounded to the nearest whole cent. This intergrade differential shall be added to the step 2 rate of each grade, beginning with grade 1, to determine the step 2 rate for the succeeding grade until the grade is reached at which the step 2 rate established through the wage survey process equals or exceeds the rate determined under this procedure. Rates of all grades above that point shall be computed in accordance with § 532.221(b) of this subpart.

(3) Steps 1, 3, 4, and 5 of each grade adjusted under paragraph (c) of this section shall be set at 96, 104, 108, and 112 percent of the step 2 rate, respectively.

(4) The leader and supervisory wage schedule grades corresponding to each nonsupervisory grade adjusted under paragraph (c) of this section shall be constructed in accordance with the procedures of § 532.203 of this subpart, on the basis of the step 2 rates established under this paragraph for the nonsupervisory wage schedule grades.

(d) All wage schedule adjustments made under this section shall be effective on the effective date of the applicable minimum wage rate.

§ 532.207 Time schedule for wage surveys.

(a) Wage surveys shall be conducted on a 2-year cycle at annual intervals.

(b) A full-scale survey shall be made in the first year of the 2-year cycle and shall include development of a current sample of establishments and the collection of wage data by visits to establishments.

(c) A wage-change survey shall be made every other year using only the same employers, occupations, survey jobs, and establishment weights used in the preceding full-scale survey. Data may be collected by telephone, mail, or personal contact.

(d) Scheduling of surveys shall take into consideration the following criteria:

(1) The best timing in relation to wage adjustments in the principal local private enterprise establishments;

(2) Reasonable distribution of workload of the lead agency;

(3) The timing of surveys for nearby or selected wage areas; and

(4) Scheduling relationships with other pay surveys.

(e) The Office of Personnel Management may authorize adjustments in the normal cycle as requested by the lead agency and based on the criteria in paragraph (d) of this section or to accommodate special studies or adjustments consistent with determining local prevailing rates.

(f) The beginning month of appropriated and nonappropriated fund wage surveys and the fiscal year during which full-scale surveys will be conducted are set out as Appendices A and B to this subpart and are incorporated in and made part of this section.

[55 FR 46141, Nov. 1, 1990]

§ 532.209 Lead Agency.

(a) The Office of Personnel Management shall select a lead agency for each appropriated and nonappropriated fund wage area based on the number of agency employees covered by the regular wage schedule for that area and the capability of the agency in providing administrative and clerical support at the local level necessary to conduct a wage survey.

(b) OPM may authorize exceptions to these criteria where this will improve the administration of the local wage survey.

(c) The listing in Appendix A to this subpart shows the lead agency for each appropriated fund wage area. The Department of Defense is the lead agency for each nonappropriated fund wage area.

[55 FR 46141, Nov. 1, 1990]

§ 532.211 Criteria for establishing appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any.

(1) *Survey area:* A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected. Except in very unusual circumstances, a wage area that includes a Metropolitan Statistical Area shall have the Metropolitan Statistical Area as the survey area or part of the survey area.

(2) *Nonsurvey area:* Nonsurvey counties, parishes, cities, or townships may be combined with the survey area(s) to form the wage area through consideration of the criteria in paragraph (d)(1) of this section.

(b) Wage areas shall include wherever possible a recognized economic community such as a Metropolitan Statistical Area or a political unit such as a county. Two or more economic communities or political units, or both, may be combined to constitute a single wage area; however, except in unusual circumstances and as an exception to the criteria, an individually defined Metropolitan Statistical Area or county shall not be subdivided for the purpose of defining a wage area.

(c) Except as provided in paragraph (a) of this section, wage areas shall be established when:

(1) There is a minimum of 100 wage employees of one agency subject to the regular schedule and the agency involved indicates that its local installation has the capacity to do the survey; and

(2) There is, within a reasonable commuting distance of the concentration of Federal employment;

(i) A minimum of either 20 establish-
nents within survey specifications
naving at least 50 employees each; or
0 establishments having at least 50
mployees each, with a combined total
f 1,500 employees; and

(ii) The total private enterprise em-
loyment in the industries surveyed in
he survey area is at least twice the
'ederal wage employment in the
urvey area.

(d)(1) Adjacent economic communi
es or political units meeting the sepa-
ate wage area criteria in paragraphs
) and (c) of this section may be com-
ined through consideration of:

(i) Distance, transportation facilities,
d geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall popula-
on, employment, and the kinds and
zes of private industrial establish-
ents.

(2) When two wage areas are com-
ned, the survey area of either or
th may be used, depending on the
ncentrations of Federal and private
nployment and locations of estab-
hments, the proximity of the survey
eas to each other, and the extent of
onomic similarites or differences as
dicated by relative levels of wage
es in each of the potential survey
eas.

e) Appropriated fund wage and
vey area definitions are set out as
pendix C to this subpart and are in-
porated in and made part of this
tion.

FR 46142, Nov. 1, 1990]

2.213 Industries included in regular appropriated fund wage surveys.

) Industries in the following
ndard Industrial Classifications
) shall be included in all wage sur-
for regular wage schedules:

Manufacturing

0 through 26 28 through	All manufacturing classes except SIC 27 (printing, publishing, and allied industries) and SIC 39 (miscellaneous manufacturing industries).

Transportation, Communications, Electric, Gas, and Sanitary Services

SIC 40	Railroad transportation
SIC 41 (except 412).	Local and suburban transit and interurban highway passenger transportation except taxicabs (SIC 412).
SIC 42	Motor freight transportation and warehousing.
SIC 45	Transportation by air.
SIC 48	Communication.
SIC 49	Electric, gas, and sanitary services.

Wholesale Trade

SIC 50	Wholesale trade—durable goods.
SIC 51	Wholesale trade—nondurable goods.

(b) A lead agency may add other industry classes to a regular survey in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local Federal employment.

(c) Specifically excluded from all wage surveys for regular wage schedules are food service and laundry establishments and industries having peculiar employment conditions that directly affect the wage rates paid and that are the basis for special wage surveys.

[55 FR 46142, Nov. 1, 1990]

§ 532.215 Establishments included in regular appropriated fund surveys.

(a) All establishments having a total employment of 50 or more employees in the prescribed industries within a survey area shall be included within the survey universe. On rare occasions and as an exception to the rule, OPM may authorize lower minimum size levels based on a recommendation of the lead agency for the wage area.

(b) Establishments to be covered in surveys shall be selected under standard probability sample selection procedures. In areas with relatively few establishments, surveys shall cover all establishments within the prescribed industry and size groups.

(c) A lead agency may not delete from a survey an establishment properly included in an establishment list drawn under statistical sampling procedures.

[55 FR 46142, Nov. 1, 1990]

§ 532.217 Appropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

Job title	Job grade
Janitor (Light)	1
Janitor	2
Material Handler	2
Maintenance Laborer	3
Packer	4
Helper (Trades)	5
Warehouseman	5
Forklift Operator	5
Material Handling Equipment Operator	5
Truckdriver (Medium)	6
Truckdriver (Heavy)	7
Machine Tool Operator II	8
Machine Tool Operator I	9
Carpenter	9
Electrician	10
Automotive Mechanic	10
Sheet Metal Mechanic	10
Pipefitter	10
Welder	10
Machinist	10
Electronics Mechanic	11
Toolmaker	13

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

Job title	Job grade
Aircraft Structures Assembler B	7
Aircraft Structures Assembler A	9
Aircraft Mechanic	10
Electrician, Ship	10
Pipefitter, Ship	10
Shipfitter	10
Shipwright	10
Machinist, Marine	10
Cable Splicer (Electric)	10
Electrical Lineman	10
Electrician (Powerplant)	10
Telephone Installer-Repairer	9
Central Office Repairer	11
Heavy Mobile Equipment Mechanic	10
Heavy Mobile Equipment Operator	10
Air Conditioning Mechanic	10
Rigger	10
Trailer Truck Driver	8
Tool Crib Attendant	6
Painter (Finish)	9
Light Vehicle Operator	5
Boiler Plant Operator	9
Boiler Plant Operator	10
Meat Cutter	8
Equipment Mechanic	10
Boom Crane Operator	9
Boom Crane Operator (Precision)	11
Tool and Parts Attendant	4
Painter (Rough)	7
Industrial Electronic Controls Repairer	10
Electronic Test Equipment Repairer	11
Electronic Computer Mechanic	11
Television Station Mechanic	11

(d) A lead agency may add the following survey jobs to the survey when the Hospital industry is included in the survey:

Job title	Job grade
Laundry Worker	1
Food Service Worker	2
Cook	8

(e) A lead agency must obtain prior approval of OPM to add a job not authorized under paragraph (a), (c), or (d) of this section.

[55 FR 46142, Nov. 1, 1990]

§ 532.219 Criteria for establishing nonappropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any, having nonappropriated fund employees.

(1) *Survey area:* A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected.

(2) *Nonsurvey area:* Nonsurvey counties, parishes, or townships may be combined with the survey area to form the wage area through consideration of the criteria in paragraph (c) of this section.

(b) Wage areas shall be established when:

(1) There is a minimum of 26 NAF wage employees in the survey area and local activities have the capability to do the survey; and

(2) There is within the survey area a minimum of 1,800 private enterprise employees in establishments within survey specifications.

(c) Two or more counties may be combined to constitute a single wage area through consideration of:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

(d) The nonappropriated fund wage and survey area definitions are set out as appendix D to this subpart and are incorporated in and made part of this section.

[55 FR 46143, Nov. 1, 1990]

§ 532.221 Industries included in regular nonappropriated fund surveys.

(a) Industries in the following Standard Industrial Classifications (SIC) shall be included in all wage surveys for regular wage schedules:

SIC	Title
Wholesale:	
5013	Motor vehicle supplies and new parts.
5122	Drugs, drug proprietaries, and druggists' sundries.
5198	Paints, varnishes, and supplies.
5131	Piece goods and notions.
5136	Men's and boys' clothing and furnishings.
5137	Women's children's and infants clothing and accessories.
5139	Footwear.
5145	Confectionery.
5064	Electrical applicances, television and radio sets.
5065	Electrical parts and equipment.
5072	Hardware.
5171	Petroleum bulk stations and terminals.
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals.
5194	Tobacco and tobacco products.
5111	Printing and writing paper.
5112	Stationery supplies.
5113	Industrial and personal service paper.
021	Furniture.
023	Home furnishings.
091	Sporting and recreational goods and supplies.
092	Toys and hobby goods and supplies.
043	Photographic equipment and supplies.
094	Jewelry, watches, diamonds and other precious stones.
99	Durable goods not elsewhere classified.
59	Farm-product raw materials not elsewhere classified.
91	Farm supplies.
5192	Books, periodicals, and newspapers.
5193	Flowers and florists' supplies.
5199	Nondurable goods not elsewhere classified.
Retail:	
5311	Department stores.
5331	Variety stores.
5962	Automatic merchandising machine operators.
5541	Gasoline service stations.
5812	Eating places.
5813	Drinking places (alcoholic beverages).
Services and Recreation:	
7011	Hotels, motels, and tourist courts.
7933	Bowling centers.
7997	Membership sports and recreation clubs (golf and country clubs only).

(b) A lead agency may add other industry classes from within the wholesale, retail, and service industry divisions in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local NAF employment.

(c) Additional industries shall be defined in terms of entire industry classes (fourth digit breakdown).

[55 FR 46143, Nov. 1, 1990]

§ 532.223 Establishments included in regular nonappropriated fund surveys.

(a) All establishments having 20 or more employees in the prescribed industries within a survey area shall be included in the survey universe. Establishments in SIC 5962, SIC 5541, SIC 7933, and SIC 7997 shall be included in the survey universe if they have eight or more employees.

(b) Establishment selection procedures are the same as those prescribed for appropriated fund surveys in paragraphs (b) and (c) of § 532.213 of this subpart.

[55 FR 46143, Nov. 1, 1990]

§ 532.225 Nonappropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

Job title	Job grade
Janitor (Light)	1
Food Service Worker	1
Food Service Worker	2
Fast Food Worker	2
Janitor	2
Laborer (Light)	2
Laborer (Heavy)	3
Service Station Attendant	3
Stock Handler	4
Short Order Cook	5
Materials Handling Equipment Operator	5
Warehouseman	5
Service Station Attendant	5
Truck Driver (Light)	5
Truck Driver (Medium)	6
Truck Driver (Heavy)	7
Cook	8
Carpenter	9
Painter	9
Automotive Mechanic	10
Electrician	10

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

Job title	Job grade
Service Station Attendant	1
Groundskeeper	4
Grill Attendant	4
Tractor Operator	6
Bowling Equipment Mechanic	7
Building Maintenance Worker	7
Vending Machine Mechanic	8
Building Maintenance Worker	8
Air Conditioning Equipment Mechanic	8
Truck Driver (Trailer)	8
Air Conditioning Equipment Mechanic	10

(d) A lead agency must obtain prior approval of OPM to add a job not listed under paragraph (a) or (c) of this section.

[55 FR 46143, Nov. 1, 1990]

§ 532.227 Agency wage committee.

(a) Each lead agency shall establish an agency wage committee for the purpose of considering matters relating to the conduct of wage surveys, the establishment of wage schedules and making recommendations thereon to the lead agency.

(b) The Agency Wage Committee shall consist of five members, with the chairperson and two members designated by the head of the lead agency, and the remaining two members designated as follows:

(1) For the Department of Defense Wage Committee, one member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the Department of Defense; and

(2) For other lead agencies, two members shall be designated by the labor organization having the largest number of wage employees by exclusive recognition in the agency.

(c) Recommendations of agency wage committees shall be developed by majority vote. Any member of an agency wage committee may submit a minority report to the lead agency along with the recommendations of the committee.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.229 Local wage survey committee.

(a)(1) A lead agency shall establish a local wage survey committee in each wage area for which it has lead agency responsibility and in which a labor organization represents, by exclusive recognition, wage employees subject to the wage schedules for which the survey is conducted.

(2) The local wage survey committee shall assist the lead agency in the conduct of wage surveys and make recommendations to the lead agency thereon.

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.

(2) All members of local wage survey committees for appropriated fund surveys shall be Federal employees appointed by their employing agencies.

(3) Members for nonappropriated fund surveys shall be nonappropriated fund employees appointed by their employing agencies.

(4) The member recommended by the labor organization must be an employee of a Federal activity for appro-

riated fund surveys or nonappro-
riated fund activity for nonappro-
riated fund surveys who is covered by
ne of the regular wage schedules in
he wage area in which the activity is
cated.

(c) A local wage survey committee
hall be established before each full-
ale wage survey. Responsibility for
roviding members shall remain with
he same agency and the same labor
ganization until the next full-scale
rvey.

(d) Recommendations of local wage
rvey committees shall be developed
majority vote. Any member of a
cal wage survey committee may
bmit a minority report to the lead
ency relating to any local wage
rvey committee majority recommen-
tion.

(e) The lead agency shall establish
e type of local wage survey organiza-
n it considers appropriate in a wage
ea which does not qualify for a local
ge survey committee under para-
aph (a) of this section.

FR 21344, Apr. 10, 1981, as amended at
FR 46140, Nov. 1, 1990. Redesignated at
FR 46141, Nov. 1, 1990]

32.231 Responsibilities of participating organizations.

a) The Office of Personnel Manage-
nt:

1) Defines the boundaries of wage
d survey areas;

2) Prescribes the required industries
be surveyed;

3) Prescribes the required job cover-
for surveys;

4) Designates a lead agency for each
ge area;

5) Establishes, jointly with lead
ncies, a nationwide schedule of
ge surveys;

) Arranges for technical services
h other Government agencies;

) Considers recommendations of
national headquarters of any
ncy or labor organization relating
the Office of Personnel Manage-
t's responsibilities for the Federal
ge System; and

) Establishes wage schedules and
s for prevailing rate employees
are United States citizens outside
he United States, District of Co-
bia, the Commonwealth of Puerto Rico, the Canal Zone, the Territories and Possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Federal Prevailing Rate Advisory Committee. This committee functions in accordance with the requirements set forth under section 5347 of title 5, United States Code.

(c) Employing agencies.

(1) Heads of agencies. The head of an agency is responsible, within the policies and procedures of the Federal Wage System, for authorizing application of wage schedules developed by a lead agency and fixing and administering rates of pay for wage employees of his/her organization.

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, data collectors, and any other assistance requested by the local wage survey committee.

(d) Lead agencies are responsible for:

(1) Planning and conducting the wage survey for that area;

(2) Developing survey specifications and providing or arranging for the identification of establishments to be surveyed;

(3) Officially ordering wage surveys;

(4) Establishing wage schedules, applying wage schedules authorized by the head of the agency; and

(5) Referring pertinent matters to the agency wage committee and the Office of Personnel Management.

(e) Agency wage committees. As appropriate, agency wage committees consider and make recommendations to the lead agency on wage schedules and any matters involving survey specifications for full-scale surveys if the lead agency chooses not to accept recommendations of the local wage survey committee or those in a minority report filed by a local wage survey committee member.

(f) Local wage survey committees. The local wage survey committee plans and conducts the wage survey in the designated wage area.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46140, Nov. 1, 1990. Redesignated at 55 FR at 46141, Nov. 1, 1990]

§ 532.233 Preparation for full-scale wage surveys.

(a) The local wage survey committee, prior to each full-scale survey:

(1) Shall hold a public hearing to receive recommendations from interested parties concerning the area, industries, establishments and jobs to be covered in the wage survey.

(2) Shall prepare a summary of the hearings and submit it to the lead agency together with the committees' recommendations concerning the survey specifications prescribed in paragraph (c) of this section.

(3) May make any other recommendations concerning the local wage survey which it considers appropriate.

(b) The lead agency shall consider the local wage survey committee's report if:

(1) The lead agency proposes not to accept the recommendations of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(c) The lead agency shall develop survey specifications after taking into consideration the reports and recommendations received from the local wage survey committee and, if applicable, the agency wage committee. The survey specifications shall include:

(1) The counties to be surveyed;

(2) The industries to be surveyed;

(3) The standard minimum size of establishments to be surveyed;

(4) Establishments to be surveyed with certainty; and

(5) The survey jobs.

(d) A list of establishments to be surveyed shall be prepared through use of statistical sampling techniques in accordance with the specifications developed by the lead agency. A copy of this list shall be forwarded to the local wage survey committee.

(e) Selection and appointment of data collectors.

(1) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage System employee recommended by the committee member representing the
qualifying labor organization and on
Federal employee recommended b
local government activities. The dat
collectors shall be selected and ap
pointed by the head of their employ
ing agency.

(2) Wage data for nonappropriate
fund surveys shall be collected b
teams, each consisting of one loca
nonappropriated fund employee rec
ommended by the committee membe
representing the qualifying labor orga
nization and one nonappropriate
fund employee recommended by loca
nonappropriated fund activities. Th
data collectors shall be selected an
appointed by the head of their em
ploying activity.

(f)(1) Each member of a local wage
survey committee, each data collector
and any other person having access t
data collected must retain this infor
mation in confidence, and is subject t
disciplinary action by the employin
agency or activity if the employee vio
lates the confidence of data secure
from private employers.

(2) Any violation of the above provi
sion by a Federal employee must be re
ported to the employing agency and
in the case of a participant designate
by a labor organization, to the recog
nized labor organization and its head
quarters, and shall be cause for th
lead agency immediately to remov
the offending person from participa
tion in the wage survey function.

[46 FR 21344, Apr. 10, 1981, as amended a
55 FR 46140, Nov. 1, 1990. Redesignated a
55 FR 46141, Nov. 1, 1990]

§ 532.235 Conduct of full-scale wag survey.

(a) Wage survey data shall not b
collected before the date the survey i
ordered by the lead agency.

(b) Data collection for a full-scal
wage survey shall be accomplished b
personal visit to the establishmen
The following required data shall b
collected:

(1) General information about th
size, location, and type of product o
service of the establishment sufficie
to determine whether the establish

ment is within the scope of the survey and properly weighted, if the survey is a sample survey;

(2) Specific information about each job within the establishment that is similar to one of the jobs covered by the survey, including a brief description of the establishment job, the number of employees in the job, and their rate(s) of pay to the nearest mill (including any cost-of-living adjustments required by contract or that are regular and customary and monetary bonuses that are regular and customary); and

(3) Any other information the lead agency believes is appropriate and useful in determining local prevailing rates.

(c) The data collectors shall submit the data they collect to the local wage survey committee together with their recommendations about the use of the data.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46140, Nov. 1, 1990. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.237 Review by the local wage survey committee.

(a) The local wage survey committee shall review all establishment information and survey job data collected in the wage survey for completeness and accuracy and forward all of the data collected to the lead agency together with a report of its recommendations concerning the use of the data. The local wage survey committee may make any other recommendations concerning the wage survey which it considers appropriate.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.239 Review by the lead agency.

(a) The lead agency shall review all material and wage survey data forwarded by the local wage survey committee to:

(1) Assure that the survey was conducted within the prescribed procedures and specifications;

(2) Consider matters included in the local wage survey committee report and recommendations;

(3) Exclude unusable data;

(4) Resolve questionable job matching and wage rate data; and

(5) Verify all computations reported on wage data collection forms.

(b) The lead agency shall determine whether the usable data collected in the wage survey are adequate for computing paylines, according to the following criteria:

(1) The wage survey data collected in an appropriated fund wage survey are adequate if the unweighted job matches include at least one survey job in the WG-01 through 04 range, one survey job in the WG-05 through 08 range, and two survey jobs in the WG-09 and above range, each providing at least 20 samples; and at least six other survey jobs, each providing at least 10 samples.

(2) The wage survey data collected in a nonappropriated fund wage survey are adequate if the unweighted job matches include at least two survey jobs in the NA-01 through 04 range providing 10 samples each, one survey job in the NA-01 through 04 range and three survey jobs in the NA-05 through 15 range providing five samples each; two other survey jobs, each providing at least five samples, and at least 100 unweighted samples for all survey jobs combined are used in the computation of the final payline.

(c)(1) If the wage survey data do not meet the adequacy criteria in paragraph (b) of this section, the lead agency shall analyze the data, construct lines and wage schedules, submit them to the agency wage committee for its review and recommendations and issue wage schedules, in accordance with the requirements of this subpart, as if the adequacy criteria were met.

(2) The lead agency may determine such a wage area to be adequate if the quantity of data obtained is large enough to construct paylines even though it was obtained for fewer than the prescribed number of jobs, or at different grade levels, or in different combinations than prescribed in paragraph (b) of this section.

(3) The lead agency may not determine a nonappropriated fund wage area to be adequate if fewer than 100

usable unweighted job matches were used in the final payline computation.

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to OPM for resolution. OPM shall:

(1) Authorize the lead agency to continue to survey the area if the lead agency believes the survey is likely to be adequate in the next full-scale survey;

(2) Authorize the lead agency to expand the scope of the survey; or

(3) Abolish the wage area and establish it as part of one or more other wage areas.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46140, Nov. 1, 1990. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.241 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rates for each appropriated fund survey job having at least 10 unweighted matches and for each nonappropriated fund job having at least 5 unweighted matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.215 and 532.227 of this subpart and the establishment weight.

(2)(i) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(ii) When sufficient incentive and piece-work rate data are obtained, the full incentive rate shall be used in computing the job weighted average rate when it is equal to or less than the average nonincentive rate. If the full incentive rate is greater than the average nonincentive rate, the incentive rate shall be discounted by 15 percent. The discounted incentive rate shall be compared with the guaranteed minimum rate and the average nonincentive rate, and the highest rate shall be used in computing the job weighted average rate.

(b) The lead agency shall compute paylines using the weighted average rates computed under paragraph (a) of this section.

(1) The lead agency shall compute unit and frequency paylines using the straight-line, least squares regression formula: $Y=a+bx$, where Y is the hourly rate, x is grade, a is the intercept of the payline with the Y-axis, and b is the slope of the payline.

(i) The unit payline shall be computed using a weight of one for each of the usable survey jobs and the weighted average rates identified and computed under paragraph (a) of this section.

(ii) The frequency payline shall be computed using a weight equal to the number of weighted matches for each of the usable survey jobs and the weighted average rates identified and computed under paragraph (a) of this section.

(2) Either or both of the lines computed according to paragraph (b)(1) of this section may be recomputed after eliminating survey job data that cause distortion in the lines.

(3) The lead agency may compute midpoint paylines using the following formula: $Y=(a_u+a_f)/2+((b_u+b_f)/2)x$, where Y is the hourly rate, x is the grade, a_u is the intercept of the unit payline, a_f is the intercept of the frequency payline, b_u is the slope of the unit payline, and b_f is the slope of the frequency payline. A midpoint line may be computed using the paylines based on all of the usable survey job data as described in paragraph (b)(1) of this section, and a second midpoint line may be computed using the paylines based on limited survey job data authorized in paragraph (b)(2) of this section.

(4) The lead agency may compute other paylines for the purpose of instituting changes in the scope of the survey.

(c) Usable data obtained from a particular establishment may not be modified or deleted in order to reduce the effect of an establishment's rates on survey findings, i.e., data will not be deleted or modified to avoid establishment domination.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46141, Nov. 1, 1990] Redesignated at 55 FR 46141, Nov. 1, 1990]]

§ 532.243 Consultation with the agency wage committee.

(a) The lead agency shall submit to the agency wage committee:

(1) The data collected in the wage survey;

(2) The report and recommendations of the local wage survey committee concerning the use of data;

(3) The lead agency's analysis of the data; and

(4) The lines computed from the data.

(b) After considering the information available to it, the agency wage committee shall report to the lead agency its recommendation for a proposed wage schedule derived from the data.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.245 Selection of payline and issuance of wage schedules.

(a) The lead agency shall select a payline and construct wage schedules therefrom for issuance as the regular wage schedules for the wage area, after considering all of the information, analysis, and recommendations made available to it pursuant to this subpart.

(b)(1) The lead agency shall prepare and maintain a record of all of the analysis and deliberations made under this subpart, documenting fully the basis for its determination under paragraph (a) of this section.

(2) The lead agency shall include in the record all of the wage survey data obtained and the recommendations and reports received from the local wage survey committee and the agency wage committee.

(c)(1) The lead agency shall issue the nonsupervisory, leader, and supervisory regular wage schedules for the local wage area, showing the rates of pay for all grades and steps.

(2) The wage schedules shall have a single effective date for all employees in the wage area, determined by the lead agency in accordance with 5 U.S.C. 5344.

(d) The head of each agency having employees in the local wage area to whom the regular wage schedules apply shall authorize the application of the wage schedules issued under paragraph (c) of this section to those employees, effective on the date specified by the lead agency.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.247 Wage change surveys.

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with § 532.213(e) of this subpart.

(d) Wage change survey data may not be collected before the date ordered by the lead agency.

(e) The local wage survey committee shall review all wage change survey data collected and forward the data to the lead agency. Where appropriate, the committee shall also forward to the lead agency a report of unusual circumstances surrounding the survey.

(f) The lead agency shall review the wage change survey data and, if applicable, the report filed by the local wage survey committee.

(g)(1) The lead agency shall recompute the line selected under § 532.225(a) of this subpart in the preceding full-scale survey using the wage change survey data and shall construct wage schedules therefrom in accordance with § 532.203 and, if appropriate, § 532.205 of this subpart.

(2) The lead agency shall consult with the agency wage committee in ac-

cordance with § 532.223 of this subpart.

(3) Records of this process shall be maintained in accordance with § 532.225(b) of this subpart.

(h) The wage schedules shall be issued and authorized in accordance with § 532.225 (c) and (d) of this subpart.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.249 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimum rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than the rate of the first step of the grade or grades of the occupation; and

(2) Federal installations and activities in the wage area are unable to recruit qualified employees at the rate of the first step of the grade or grades of the occupation.

(b) Any authorizations made under paragraph (a) of this section shall be indicated on the regular wage schedule for the wage area.

(c) Any authorizations made under paragraph (a) of this section shall be terminated with the issuance of a new regular wage schedule unless the conditions that warrant the authorizations continue and the new regular wage schedule continues that authorization.

(d) The lead agency, prior to terminating any authorization made under paragraph (a) of this section, shall require the appropriate official or officials at all installations or activities to which the authorization applies to discuss the termination with the appropriate official or officials of exclusively recognized employee organizations representing employees in the affected occupation. The agency officials shall report the results of these discussions to the lead agency.

(e) No employee shall have his/her pay reduced because of cancellation of an authorization made under paragraph (a) of this section.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.251 Special rates and special schedules.

(a) A lead agency, with the approval of the Office of Personnel Management, may establish special rates or special schedules for use within an area for specific occupations which are critical to the mission of a Federal activity based on findings that:

(1) Serious recruitment and retention problems exist;

(2) Rates on the authorized regular schedule are inadequate for the recruitment and retention of qualified employees; and

(3) Authorization of increased minimum rates under § 532.229 of this subpart will not solve the problems.

(b) Special rates shall be based on industry wage data for the specific occupations. A single rate shall be used when this represents industry practice; five rates with intervals of four percent between successive rates shall be used when rate ranges are used by industry, with the rate of the second step representing the weighted average of the industry rates.

(c) Any special rates established under paragraph (b) of this section shall be shown on the regular schedule which shall indicate each occupation and grade for which the rates are authorized. These rates shall be paid by all agencies having these occupations within the wage area.

(d)(1) Special schedules will ordinarily have the same grade, job ranking, and step-rate structure as regular schedules; only the wage rates will differ.

(2) If the use of grades is not appropriate, rates only shall be specified for each individual job.

(3) In other situations which require departure from regular schedule practices, the Office of Personnel Management authorization for the special schedule shall include instructions for its construction, application, and administration.

(4) Unless otherwise specified, positions covered by special wage sched-

ules shall be subject to the general provisions of this part and to other applicable rules and regulations of the Office of Personnel Management.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.253 Special rates or rate ranges for leader, supervisory, and production facilitating positions.

(a) When special rates or rate ranges are established for nonsupervisory positions, a lead agency also shall establish special rates for leader, supervisory, and production facilitating positions, classified to the same occupational series and title, that lead, supervise, or perform production facilitating work directly relating to the nonsupervisory jobs covered by the special rates.

(b) The step rate structure shall be the same as that of the related nonsupervisory special rate or rate range.

(c) The following formulas shall be used to establish a special rate or rate range:

(1) A single rate shall equal the top step of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the top step of the appropriate nonsupervisory grade on the regular schedule and the special nonsupervisory rate.

(2) For a multiple rate range, the step 2 rate shall equal the step 2 rate of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the prevailing rate of the appropriate nonsupervisory grade on the regular schedule and the prevailing rate of the special rate position. Other required step rates shall be computed in accordance with the formula established in § 532.203 of this subpart.

[55 FR 46144, Nov. 1, 1990]

§ 532.255 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas and for employees in Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation shall establish and issue wage schedules for employees in American Samoa. These wage schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

(b) Schedules will be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first day of the first pay period that begins on or after January 1 of the succeeding year.

(c) Step 2 rates for each nonsupervisory grade will be derived by computing a simple average of each step 2 rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the step 2 rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Pay schedules for nonsupervisory (WD) and supervisory (WN) production facilitating positions will be established by converting the WD and WN grade levels to regular FWS supervisory (WS) grade level as specified in the table which follows:

	WN supervisory level	WS grade
WD nonsupervisory level:		
1		3
2		4
3		5
4		6
5	1	7
6	2	8
7	3	9
8	4	10
9	5	11
10	6	12
11	7	13
	8	14
	9	15

[50 FR 38634, Sept. 24, 1985, as amended at 51 FR 28799, Aug. 12, 1986; 51 FR 39853,

Nov. 3, 1986; 54 FR 52011, Dec. 20, 1989. Redesignated and amended at 55 FR 46141, Nov. 1, 1990]

§ 532.257 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Department of Defense shall establish and issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules will be —

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Step 2 rates for each nonsupervisory grade will be derived by computing a simple average of each step 2 rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the step 2 rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

[50 FR 38634, Sept. 24, 1985, as amended at 51 FR 28799, Aug. 12, 1986; 54 FR 52011, Dec. 20, 1989. Redesignated and amended at 55 FR 46141, Nov. 1, 1990]

§ 532.259 Virgin Islands special wage schedules.

(a) The Department of Defense shall issue special wage schedules for U.S. citizen wage employees in the Virgin Islands in fiscal years 1987, 1988, and 1989. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) In each of the three fiscal years, on the effective date of the foreign areas schedules as prescribed in § 532.233, each grade and each step of the Virgin Islands special schedules will be increased by—

(1) The same cents per hour as the fiscal year's adjustment in the foreign areas schedules at the corresponding grade and step; plus

(2) An amount at each grade and step equal, as nearly as possible, to one-fourth of the difference between the FY 1986 Virgin Islands special schedules and the FY 1986 foreign areas schedules.

(c) The Virgin Islands special schedules will be abolished in FY 1990 on the effective date of the adjustment in the foreign areas schedules, and Virgin Islands wage employees will become subject to the foreign areas schedules as prescribed in § 532.233.

[51 FR 39853, Nov. 3, 1986. Redesignated at 55 FR 46141, Nov. 1, 1990]

§ 532.261 Special wage schedules for leader and supervisory schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(a) The Department of Defense shall establish special wage schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(b) The step 2 rate for each grade of the leader wage schedule shall be equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area.

(c) The step 2 rate for the supervisory wage schedule shall be:

(1) For grades WS-1 through WS-10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area, plus 60 percent of the rate for step 2 of WG-10;

(2) For grades WS-11 through WS-18, the second rate of WS-10 plus 5, 11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS-10 and WS-19; and

(3) For grade WS-19, the third rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment. The WS-19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

(d) Step rates shall be developed by using the formula established in § 532.203 of this subpart.

[55 FR 46144, Nov. 1, 1990]

§ 532.263 Special wage schedules for production facilitating positions.

(a) The lead agency in each FWS wage area shall establish special nonsupervisory and supervisory production facilitating wage schedules for employees properly allocable to production facilitating positions under applicable Federal Wage System job grading standards.

(b) Nonsupervisory schedules shall have 11 pay levels, and supervisory schedules shall have 9 pay levels.

(c) Pay levels and rates of pay for nonsupervisory (WD) schedules and supervisory (WN) schedules shall be identical to the pay levels and rates of pay for the corresponding grades on the local FWS regular supervisory wage schedule. Pay levels shall be determined in accordance with the following table:

	WN supervisory level	WS grade
WD nonsupervisory Level		
1		3
2		4
3		5
4		6
5	1	7
6	2	8
7	3	9
8	4	10
9	5	11
10	6	12
11	7	13
	8	14
	9	15

(d) Special production facilitating wage schedules shall be effective on the same date as the regular wage schedules in the FWS wage area.

[55 FR 46144, Nov. 1, 1990]

§ 532.265 Special wage schedules for apprentices and shop trainees.

(a) Agencies may establish special wage schedules for apprentices and shop trainees who are included in:

(1) Formal apprenticeship programs involving training for journeyman level duties in occupations that are recognized as apprenticeable by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or

(2) Formal shop trainee programs involving training for journeyman level duties in nonapprenticeable occupations that require specialized trade or craft skill and knowledge.

(b) Special schedules shall consist of a single wage rate for each training period. Wage rates shall be determined as follows:

(1) Rates shall be based on the current second step rate of the target journeyman grade level on the regular nonsupervisory wage schedule for the area where the apprentice or trainee is employed.

(2) The entrance rate shall be computed at 65 percent of the journeyman level, step 2, rate, or the WG-1, step 1, rate, whichever is greater.

(3) When the WG-1, step 1, rate is used, the apprentice rate shall be increased by a minimum of 5 cents per hour for each succeeding increment interval until the rate obtained by this method equals the rate computed under the formula. No increase shall be less then 5 cents per hour.

(c) Advancement to higher increments shall be at 26-week intervals, regardless of the total length of the training period. Intermediate rates shall be established by subtracting the entrance rate from the journeyman level, step 2 rate, and dividing the difference by the number of 26-week periods of the particular training term. The resulting quotient equals the increment for each succeeding rate.

(d) Agencies may hire at advanced rates or accelerate progression through scheduled wage rates if prescribed by approved agency training standards or programs.

(e) If the employee is promoted to the target job or to a job at the same grade level, the promotion shall be to the second step rate. If the employee is assigned to a job at a grade level that is less than the grade level of the target job, existing pay fixing rules shall be followed.

[55 FR 46144, Nov. 1, 1990]

§ 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

(a) The Department of Defense shall conduct special industry surveys and establish special wage schedules for wage employees in Puerto Rico whose primary duties involve the performance of work related to aircraft, electronic equipment, and optical instrument overhaul and repair.

(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures are applicable.

(c) Special survey specifications are as follows:

(1) Surveys shall, as a minimum, include the air transportation and electronics industries in SICs 3571, 3572, 3575, 3577, 3663, 3669, 3679, 3672, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

(2) Surveys shall cover all establishments in the surveyed industries.

(3) Surveys shall, as a minimum, include all the following jobs:

Job titles	Job grades
Aircraft Cleaner	3
Fleet Service Worker	5
Aircraft Mechanic	10
Industrial Electronic Controls Repairer	10
Aircraft Instrument Mechanic	11
Electronic Test Equipment Repairer	11
Electronics Mechanic	11
Electronic Computer Mechanic	11
Television Station Mechanic	11

(d) The data collected in a special wage survey shall be considered adequate if there are as many weighted matches used in computing the nonsupervisory payline as there are employees covered by the special wage rate schedules.

(e) Each survey job used in computing the nonsupervisory payline must include a minimum of three unweighted matches.

(f) Special schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) The waiting period for within-grade increases shall be 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(h) Special wage schedules shall be effective on the same date as the regular wage schedules for the Puerto Rico wage area.

[55 FR 46145, Nov. 1, 1990]

§ 532.269 Special wage schedules for Corps of Engineers, U.S. Army navigation lock and dam employees.

(a) The Department of Defense shall establish special wage schedules for nonsupervisory, leader, and supervisory wage employees of the Corps of Engineers, U.S. Army, who are engaged in operating lock and dam equipment or who repair and maintain navigation lock and dam operating machinery and equipment.

(b) Employees shall be subject to one of the following pay provisions:

(1) If all navigation lock and dam installations under a District headquarters office are located within a single wage area, the employees shall be paid from special wage schedules having rates identical to the regular wage schedule applicable to that wage area.

(2) If navigation lock and dam installations under a District headquarters office are located in more than one wage area, employees shall be paid from a special wage schedule having rates identical to the regular wage schedule authorized for the headquarters office.

(c) Each special wage schedule shall be effective on the same date as the regular schedule on which it is based.

[55 FR 46145, Nov. 1, 1990]

§ 532.271 Special wage schedules for National Park Service positions in overlap areas.

(a)(1) The Department of the Interior shall establish special schedules for wage employees of the National Park Service whose duty station is located in one of the following NPS jurisdictions:

(i) Blue Ridge Parkway;

(ii) Natchez Trace Parkway; and

(iii) Great Smoky Mountains National Park.

(2) Each of these NPS jurisdictions is located in (i.e., overlaps) more than one FWS wage area.

(b) The special overlap wage schedules in each of the NPS jurisdictions shall be based on a determination concerning which regular nonsupervisory wage schedule in the overlapped FWS wage areas provides the most favorable payline for the employees.

(c) The most favorable payline shall be determined by computing a simple average of the 15 nonsupervisory second step rates on each one of the regular schedules authorized for each wage area overlapped. The highest average obtained by this method will identify the regular schedule that produces the most favorable payline.

(d) Each special schedule shall be effective on the same date as the regular schedule on which it is based.

(e) If there is a change in the identification of the most favorable payline, the special scheule for the current year shall be issued on its normal effective date. The next special scheule shall be issued on the effective date of the next regular schedule that produced the most favorable payline for the NPS jurisdiction in the previous year.

[55 FR 46145, Nov. 1, 1990]

§ 532.273 Special wage schedules for United States Information Agency Radio Antenna Rigger positions.

(a) The United States Information Agency shall establish special wage schedules for Radio Antenna Riggers employed at transmitting and relay stations in the United States.

(b) The wage rate shall be the regular wage rate for the appropriate grade for Radio Antenna Rigger for the wage area in which the station is located, plus 25 percent of that rate.

(c) The 25 percent differential shall be in lieu of any environmental differential that would otherwise be payable.

(d) The special schedules shall be effective on the same date as the regular wage schedules for the wage area in which the positions are located.

[55 FR 46145, Nov. 1, 1990]

§ 532.275 Special wage schedules for ship surveyors in Puerto Rico.

(a) The Department of Defense shall establish special wage schedules for nonsupervisory ship surveyors and supervisory ship surveyors in Puerto Rico.

(b) Rates shall be computed as follows:

(1) The step 2 rate for nonsupervisory ship surveyors shall be set at 149.5 percent of the WG-10, step 2, rate on the overseas schedule.

(2) The step 2 rate of supervisory ship surveyors shall be set at 166.75 percent of the WG-10, step 2, rate on the overseas schedule.

(3) Step rates shall be developed by using the standard formulas established in § 532.203 of this part.

(c) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Puerto Rico wage area.

[55 FR 46145, Nov. 1, 1990]

§ 532.277 Special wage schedules for U.S. Navy positions in Bridgeport, California.

(a) The Department of Defense shall establish special wage schedules for prevailing rate employees at the United States Marine Corps Mountain Warfare Training Center in Bridgeport, California.

(b) Schedules shall be established by increasing the step 2 rates on the Reno, Nevada, regular wage schedule by 10 percent.

(c) Step rates shall be developed by using the standard formulas established in § 532.203 of this subpart.

(d) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Reno, Nevada, wage area.

[55 FR 46146, Nov. 1, 1990]

§ 532.279 Special wage schedules for printing positions.

(a) The lead agency in a special printing schedule area listed in paragraph (j) of this section shall conduct special printing surveys and establish special printing schedules for positions properly allocable to the 4400 printing job familiy or the 5330 printing equipment repairing job series under FWS job grading standards.

(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures established in §§ 532.213 through 532.227 of this subpart shall be applicable to printing surveys and schedules.

(c) Specifications for printing surveys shall be as follows:

(1) Standard industrial code 2752 shall be included in the printing survey. A lead agency may also add other SICs in Major Group 27 to the survey in light of survey experience.

(2) Surveys shall cover establishments with a total employment of 20 or more.

(3) A lead agency shall survey the following jobs:

Job title	Job grade
Opaquer	4
Offset Press Helper	5
Bindery Machine Operator (Helper)	5
Film Assembler-Stripper (Single Flat-Single Color)	5
Platemaker (Single Color)	5
Film Assembler-Stripper (Partial and Composite Flats)	7
Platemaker (Double Exposure and Multicolor Line)	7
Offset Press Operator	8
Bindery Machine Operator (Paper Cutter)	8
Bindery Machine Operator (Power Folder)	8
Film Assembler-Stripper (Multiple Flat-Multiple Color)	8
Platemaker (Multicolor Halftones and Screen Tints)	8
Bindery Machine Operator	9
Offset Operator (15-18 Thru 14-20)	9
Offset Operator (17-22 Thru 19-25)	9
Offset Operator (22-29 Thru 35-39)	9
Offset Operator (35-45 and Larger)	10
Offset Photographer (Halftone)	10
Negative Engraver	10
Bookbinder	10
Lithographic Pressman Multicolor (17-22 Thru 25-39)	10
Lithographic Pressman Multicolor (34-44 and Larger)	11
Offset Photographer (Process Color)	11

(d) The data collected in a special printing survey shall be considered adequate for computing paylines if the unweighted job matches for nonsupervisory jobs include at least 20 matches in the grade 1 through 5 range, 20 matches in the grade 6 through 8 range, 40 matches in the grade 9 and above range, and 60 additional matches at any grade.

(e) Each survey job used in computing printing schedule paylines must include a minimum of three unweighted matches.

(f) Special printing schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) No step 3 rate on a special printing schedule shall be less than the maximum rate of the corresponding grade on the regular wage schedule for the wage area. If an adjustment is required under this provision, the payline rate of the special schedule shall be adjusted so as to provide a step 3 special schedule rate equal to the maximum rate of the corresponding regular schedule grade when the formula in paragraph (f) of this section is applied. Step 1 shall be set at 96 percent of the adjustment payline rate.

(h) The waiting period for within-grade increases under special printing schedules is 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(i) Speical printing schedules shall be effective on the same date as the regular wage schedules for the authorized wage areas.

(j) Special printing schedules are authorized in the following wage areas:

(1) Washington, DC.
(2) St. Louis, Missouri.
(3) Kansas City, Missouri.
(4) Philadelphia, Pennsylvania.
(5) New York, New York.
(6) Atlanta, Georgia.
(7) San Francisco, California.
(8) Los Angeles, California.
(9) San Diego, California.
(10) Detroit, Michigan.
(11) Seattle-Everett-Tacoma, Washington.

[55 FR 46146, Nov. 1, 1990]

§ 532.281 Special wage schedules for Divers and Tenders.

(a) Agencies are authorized to establish special schedule payments for prevailing rate employees who perform diving and tending duties.

(b) Employees who perform diving duties shall be paid 175 percent of the locality WG-10, step 2, rate for all payable hours of the shift.

(c) Employees who perform tending duties shall be paid at the locality WG-10, step 2, rate for all payable hours of the shift.

(d) Employees whose regular scheduled rate exceeds the diving/tending rate on the day they perform such duties shall retain their regular scheduled rate on that day.

(e) An employee's diving/tending rate shall be used as the basic rate of pay for computing all premium payments for a shift.

(f) Employees who both dive and tend on the same shift shall receive the higher diving rate as the basic rate for all hours of the shift.

[55 FR 46146, Nov. 1, 1990]

§ 532.283 Special wage schedules for nonappropriated fund tipped employees classified as Waiter/Waitress.

(a) Tipped employees shall be paid from the regular nonappropriated fund (NAF) schedule applicable to the employee's duty station.

(b) A tip offset may be authorized for employees classified as Waiter/Waitress. For purposes of this section, a tipped employee is one who is engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips, and a tip offset is the amount of money by which an employer, in meeting legal minimum wage standards, may reduce a tipped employee's cash wage in consideration of the receipt of tips.

(c) A tip offset may be established, abolished, or adjusted by NAF instrumentalities on an annual basis and at such additional times as new or revised minimum wage statutes require. The amount of any tip offset may vary within a single instrumentality based on location, type of service, or time of service.

(d) If tipped employees are represented by a labor organization holding exclusive recognition, the employing NAF instrumentality shall negotiate with such organization to arrive at a determination as to whether, when, and how much tip offset shall be applied. Changes in tip offset practices may be made more frequently than annually as a result of collective bargaining agreement.

(e) Tip offset practices shall be governed by the Fair Labor Standards Act, as amended, or the applicable statutes of the State, possession or territory where an employee works, whichever provides the greater benefit to the employee. In locations where tip offset is prohibited by law, the requirements of paragraphs (c) and (d) of this section do not apply.

[55 FR 46146, Nov. 1, 1990]

APPENDIX A TO SUBPART B OF PART 532—NATIONWIDE SCHEDULE OF APPROPRIATED FUND REGULAR WAGE SURVEYS

This appendix shows the annual schedule of wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be done in odd or even numbered fiscal years.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Alabama	Anniston-Gadsden	DoD	April	Even.
	Birmingham	VA	January	Even.
	Dothan	DoD	July	Odd.
	Huntsville	DoD	April	Even.
Alaska	Alaska	DoD	July	Even.
Arizona	Northeastern Arizona	DoD	March	Odd.
	Phoenix	DoD	March	Odd.
	Tucson	DoD	March	Odd.
Arkansas	Little Rock	DoD	August	Even.
California	Fresno	DoD	February	Odd.
	Los Angeles	DoD	September	Even.
	Sacramento	DoD	February	Odd.
	Salinas-Monterey	DoD	February	Even.
	San Bernardino-Riverside-Ontario	DoD	September	Even.
	San Diego	DoD	September	Odd.
	San Francisco	DoD	September	Odd.
	Santa Barbara	DoD	September	Even.
	Stockton	DoD	February	Odd.
Colorado	Denver	DoD	January	Odd.
	Southern & Western Colorado	DoD	January	Even.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Connecticut	New Haven-Hartford	VA	April	Odd.
	New London	DoD	September	Even.
Delaware	Wilmington	DoD	November	Even.
District of Columbia	Washington, D.C	DoD	August	Odd.
Florida	Cocoa Beach-Melbourne	DoD	October	Even.
	Jacksonville	DoD	January	Odd.
	Miami	DoD	January	Odd.
	Orlando	DoD	September	Odd.
	Panama City	DoD	September	Even.
	Pensacola	DoD	September	Odd.
	Tampa-St. Petersburg	VA	April	Even.
Georgia	Albany	DoD	August	Odd.
	Atlanta	DoD	May	Odd.
	Augusta	DoD	June	Odd.
	Columbus	DoD	August	Odd.
	Macon	DoD	June	Odd.
	Savannah	DoD	May	Odd.
Hawaii	Hawaii	DoD	June	Even.
Idaho	Boise	DoD	July	Odd.
Illinois	Champaign-Urbana	DoD	September	Odd.
	Chicago	VA	September	Even.
Indiana	Bloomington-Bedford-Washington	DoD	October	Odd.
	Fort Wayne-Marion	VA	November	Odd.
	Indianapolis	DoD	October	Odd.
Iowa	Cedar Rapids-Iowa City	VA	July	Even.
	Davenport-Rock Island-Moline	DoD	October	Even.
	Des Moines	VA	September	Odd.
	Dubuque	DoD	October	Even.
Kansas	Topeka	DoD	November	Even.
	Wichita	DoD	November	Even.
Kentucky	Lexington	DoD	February	Even.
	Louisville	DoD	February	Odd.
Louisiana	Lake Charles-Alexandria	DoD	April	Even.
	New Orleans	VA	February	Odd.
	Shreveport	DoD	May	Even.
Maine	Augusta	VA	May	Odd.
	Central and Northern Maine	DoD	June	Even.
	Portland	DoD	May	Odd.
Maryland	Baltimore	DoD	September	Odd
	Hagerstown-Martinsburg-Chambersburg	DoD	January	Even.
Massachusetts	Boston	VA	August	Even.
	Central and Western Massachusetts	DoD	June	Even.
Michigan	Detroit	DoD	January	Odd.
	Northwestern Michigan	DoD	August	Odd.
	Oscoda-Alpena	DoD	August	Odd.
	Southwestern Michigan	VA	October	Even.
Minnesota	Duluth	DoD	June	Odd.
	Minneapolis-St. Paul	VA	March	Odd.
Mississippi	Biloxi	DoD	November	Even.
	Columbus-Aberdeen	DoD	February	Even.
	Jackson	DoD	February	Odd.
	Meridian	DoD	February	Odd.
Missouri	Kansas City	DoD	October	Odd.
	St. Louis	DoD	October	Odd.
	Southern Missouri	DoD	October	Odd.
Montana	Great Falls	DoD	July	Even.
Nebraska	Omaha	DoD	October	Odd.
Nevada	Las Vegas	DoD	September	Even.
	Reno	DoD	March	Even.
New Hampshire	Portsmouth	DoD	September	Even.
New Mexico	Albuquerque	DoD	April	Odd.
New York	Albany-Schenectady-Troy	DoD	March	Odd.
	Buffalo	VA	September	Even.
	Newburg	DoD	March	Even.
	New York	DoD	January	Even.
	Northern New York	DoD	March	Odd.
	Rochester	VA	February	Even.
	Syracuse-Utica-Rome	DoD	March	Even.
North Carolina	Asheville	VA	June	Even.
	Central North Carolina	DoD	May	Even.
	Charlotte	VA	August	Odd.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
	Southeastern North Carolina	DoD	January	Odd.
rth Dakota	North Dakota	DoD	March	Even.
io	Cincinnati	VA	January	Odd.
	Cleveland	NASA	April	Odd.
	Columbus	DoD	January	Odd.
	Dayton	DoD	January	Even.
lahoma	Oklahoma City	DoD	August	Odd.
	Tulsa	DoD	August	Odd
egon	Portland	DoD	August	Odd.
	Southwestern Oregon	VA	May	Even.
nnsylvania	Harrisburg	DoD	January	Even.
	Philadelphia	DoD	October	Even.
	Pittsburgh	VA	August	Odd.
	Scranton-Wilkes-Barre	DoD	August	Odd.
erto Rico	Puerto Rico	DoD	July	Odd.
ode Island	Narragansett Bay	DoD	January	Odd
uth Carolina	Charleston	DoD	July	Even.
	Columbia	DoD	May	Even.
uth Dakota	Eastern South Dakota	VA	October	Odd
nnessee	Eastern Tennessee	VA	February	Odd.
	Memphis	DoD	February	Even.
	Nashville	DoD	February	Even.
as	Austin	DoD	June	Even.
	Corpus Christi	DoD	June	Even.
	Dallas-Fort Worth	DoD	October	Odd.
	El Paso	DoD	April	Even.
	Houston-Galveston-Texas City	VA	March	Even.
	San Antonio	DoD	June	Odd.
	Texarkana	DoD	April	Odd.
	Waco	DoD	May	Odd.
	Western Texas	DoD	May	Odd.
	Wichita Falls-Southwestern Oklahoma	DoD	August	Even.
	Utah	DoD	July	Odd.
nia	Norfolk-Portsmouth-Newport News-Hampton.	DoD	May	Even.
	Richmond	DoD	November	Odd.
	Roanoke	VA	November	Even.
hington	Seattle-Everett-Tacoma	DoD	September	Even.
	Southeastern Washington-Eastern Oregon.	DoD	June	Odd.
	Spokane	DoD	July	Odd.
Virginia	West Virginia	DoD	March	Odd.
onsin	Madison	VA	July	Even.
	Milwaukee	VA	June	Odd.
	Southwestern Wisconsin	DoD	June	Even.
ming	Wyoming	DoD	January	Even.

FR 46147, Nov. 1, 1990]

ENDIX B TO SUBPART B OF PART 32—NATIONWIDE SCHEDULE OF NON- PROPRIATED FUND REGULAR WAGE RVEYS

is appendix shows the annual schedule AF wage surveys. It lists all States al- betically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be conducted in odd or even numbered fiscal years.

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
a	Calhoun	April	Even.
	Madison	April	Even.
	Montgomery	August	Odd.
	Anchorage	July	Even.

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
Arizona	Maricopa	March	Odd
	Pima	March	Odd
	Yuma	October	Even
Arkansas	Pulaski	August	Odd
California	Alameda-Contra Costa	September	Odd
	Imperial	September	Odd
	Kern	February	Odd
	Los Angeles	September	Even
	Marin-Sonoma	September	Odd
	Merced	February	Odd
	Monterey	February	Odd
	Orange	September	Even
	Riverside	October	Odd
	Sacramento	February	Odd
	San Bernardino	October	Odd
	San Diego	September	Odd
	San Francisco	September	Odd
	San Joaquin	February	Odd
	Santa Barbara	September	Even
	Santa Clara	September	Odd
	Solano	September	Odd
	Ventura	September	Even
Colorado	Adams-Denver	January	Even
	El Paso	January	Even
Connecticut	New London	September	Even
Delaware	Kent	November	Even
District of Columbia	Washington, DC	August	Even
Florida	Bay	September	Odd
	Brevard	October	Even
	Dade	January	Odd
	Duval	January	Odd
	Escambia	September	Odd
	Hillsborough	July	Even
	Monroe	January	Odd
	Okaloosa	September	Odd
	Orange	October	Even
Georgia	Chatham	June	Odd
	Clayton-Cobb-Fulton	June	Odd
	Columbus	August	Odd
	Dougherty	August	Odd
	Houston	June	Odd
	Lowndes	August	Odd
	Richmond	June	Odd
Guam	Guam	September	Even
Hawaii	Honolulu	May	Even
Idaho	Ada-Elmore	July	Odd
Illinois	Champaign	October	Even
	Cook	October	Odd
	Lake	October	Odd
	Rock Island	October	Even
	St. Clair	November	Odd
Indiana	Marion	October	Odd
Kansas	Leavenworth/Jackson-Johnson	November	Odd
	Sedgwick	November	Odd
Kentucky	Christian-Montgomery	February	Even
	Clark-Hardin-Jefferson	February	Even
Louisiana	Bossier-Caddo	May	Odd
	Orleans	February	Odd
	Rapides	May	Odd
Maine	Aroostook	July	Odd
	Cumberland	May	Odd
Maryland	Anne Arundel	October	Odd
	Charles-St. Marys	August	Even
	Harford	October	Odd
	Montgomery-Prince Georges	August	Even
	Washington	January	Even
Massachusetts	Hampden	July	Odd
	Middlesex	September	Even
	Norfolk	September	Even
Michigan	Macomb	January	Odd

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
	Marquette	August	Odd.
Minnesota	Hennepin	March	Odd.
Mississippi	Harrison	October	Even.
	Lauderdale	February	Odd.
	Lowndes	February	Odd.
Montana	Cascade	July	Odd.
Nebraska	Douglas-Sarpy	October	Odd
Nevada	Churchill-Washoe	March	Odd.
	Clark	October	Odd.
New Hampshire	Rockingham	September	Even.
New Jersey	Burlington	October	Even.
	Monmouth	January	Even
	Morris	August	Odd.
	Ocean	October	Even.
New Mexico	Bernalillo	April	Odd.
	Dona Ana	April	Odd
New York	Clinton	March	Even.
	Kings-Queens	January	Even.
	Niagara	January	Odd.
	Oneida	March	Even.
	Orange	March	Even
North Carolina	Craven	January	Odd.
	Cumberland	May	Even
	Onslow	May	Odd.
	Wayne	May	Even.
North Dakota	Grand Forks	March	Odd.
	Ward	March	Odd.
Ohio	Franklin	January	Odd.
	Greene-Montgomery	January	Odd
Oklahoma	Comanche	August	Even.
	Oklahoma	August	Odd.
Pennsylvania	Allegheny	August	Odd.
	Montgomery	October	Even.
	Cumberland	May	Even.
	Franklin	January	Even.
	Lebanon	January	Even.
	Philadelphia	October	Even.
	York	May	Even.
Puerto Rico	Guaynabo-San Juan	July	Odd.
Rhode Island	Newport	January	Odd.
South Carolina	Charleston	July	Even.
	Horry	January	Odd.
	Richland	May	Even.
South Dakota	Pennington	January	Even.
Tennessee	Shelby	February	Even.
Texas	Bell	June	Odd.
	Bexar	June	Even.
	Dallas	November	Odd.
	El Paso	April	Odd.
	Lubbock	June	Odd.
	McLennan	April	Even.
	Nueces	June	Even.
	Tarrant	November	Odd.
	Taylor	June	Odd.
	Tom Green	June	Odd.
	Travis	June	Even.
	Wichita	August	Even.
Utah	Davis-Salt Lake-Weber	March	Odd.
Virginia	Alexandria-Arlington-Fairfax	August	Even.
	Chesterfield-Richmond	November	Even.
	Hampton-Newport News	May	Even.
	Norfolk-Portsmouth-Virginia Beach	May	Even.
	Prince William	August	Even.
Washington	King	July	Even.
	Kitsap	September	Even.
	Pierce	August	Even.
	Spokane	July	Odd.
Wyoming	Laramie	January	Even.

[55 FR 46149, Nov. 1, 1990]

APPENDIX C TO SUBPART B OF PART 532—APPROPRIATED FUND WAGE AND SURVEY AREAS

This appendix lists the wage area definitions for appropriated fund employees. With a few exceptions, each area is defined in terms of county units, independent cities, or, in the New England States, of entire township or city units. Each wage area definition consists of:

(1) *Wage area title.* Wage areas usually carry the title of the principal city in the area. Sometimes, however, the area title reflects a broader geographic area, such as Wyoming or Eastern Tennessee.

(2) *Survey area definition.* Lists each county, independent city, or township in the survey area.

(3) *Area of application definition.* Lists each county, independent city, or township which, in addition to the survey area, is in the area of application.

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

ALABAMA

ANNISTON-GADSDEN

Survey Area

Alabama:
  Calhoun
  Etowah
  Talladega

Area of Application. Survey area plus:

Alabama:
  Cherokee
  Clay
  Cleburne
  De Kalb
  Randolph

BIRMINGHAM

Survey area

Alabama:
  Jefferson
  St. Clair
  Shelby
  Tuscaloosa
  Walker

Area of Application. Survey area plus:

Alabama:
  Bibb
  Blount
  Cullman
  Fayette
  Greene
  Hale
  Lamar
  Marengo
  Perry
  Pickens

DOTHAN

Survey area

Alabama:
  Dale
  Houston
Georgia:
  Early

Area of Application. Survey area plus:

Alabama:
  Barbour
  Coffee
  Geneva
  Henry
Georgia:
  Clay
  Miller
  Seminole

HUNTSVILLE

Survey area

Alabama:
  Limestone
  Madison
  Marshall
  Morgan

Area of Application. Survey area plus:

Alabama:
  Colbert
  Franklin
  Jackson
  Lauderdale
  Lawrence
  Marion
  Winston
Tennessee:
  Franklin
  Giles
  Lawrence
  Lincoln
  Moore
  Wayne

ALASKA

Survey area

Alaska:
  Anchorage
  Fairbanks
  Juneau (and the areas within a 15-mile radius of their corporate city limits)
Area of Application. State of Alaska (except special area schedules).

ARIZONA[4]

NORTHEASTERN ARIZONA

Survey Area

Arizona:

Apache
Coconino
Navajo
New Mexico:
McKinley
San Juan

Area of Application. Survey area plus:

Colorado:
La Plata
Montezuma
Utah:
Kane
San Juan [1]

PHOENIX

Survey area

Arizona:
Gila
Maricopa

Area of Application. Survey area plus:

Arizona:
Pinal
Yavapai

TUCSON

Survey area

Arizona:
Pima

Area of Application. Survey area plus:

Arizona:
Cochise
Graham
Greenlee
Santa Cruz

ARKANSAS

LITTLE ROCK

Survey Area
Jefferson
Pulaski
Saline

Area of Application. Survey area plus:

Arkansas:
Arkansas
Ashley
Baxter
Boone
Bradley
Calhoun
Chicot
Clay
Clark
Cleburne
Cleveland
Conway
Dallas
Desha
Drew
Faulkner
Franklin
Fulton
Garland
Grant
Greene
Hot Spring
Independence
Izard
Jackson
Johnson
Lawrence
Lincoln
Logan
Lonoke
Madison
Marion
Monroe
Montgomery
Newton
Ouachita
Perry
Phillips
Pike
Polk
Pope
Prairie
Randolph
Scott
Searcy
Sebastian
Sharp
Stone
Union
Van Buren
White
Woodruff
Yell

CALIFORNIA

FRESNO

Survey area

California
Fresno
Kings
Tulare

Area of Application. Survey area plus:

California:
Kern [2]
Madera
Mariposa
Merced
Tuolumne [3]

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[1] Does not include the Canyonlands National Park portion.

[2] Does not include China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).

[3] Only includes Yosemite National Park portion.

LOS ANGELES

Survey area

California:
  Los Angeles

Area of Application. Survey area plus:

California:
  Inyo
  Kern [4]
  Orange
  Riverside [5]
  San Bernardino [6]
  Ventura

SACRAMENTO

Survey area

California:
  Placer
  Sacramento
  Sutter
  Yolo
  Yuba

Area of Application. Survey area plus:

California:
  Alpine
  Amador
  Butte
  Colusa
  Del Norte
  El Dorado
  Glenn
  Humboldt
  Lake
  Modoc
  Nevada
  Plumas
  Shasta
  Sierra
  Siskiyou
  Tehama
  Trinity

SALINAS-MONTEREY

Survey area

California:
  Monterey

Area of Application. Survey area plus:

California:
  San Benito

SAN BERNARDINO-RIVERSIDE-ONTARIO

Survey area

California:
  Riverside [7]
  San Bernardino [8]

Area of Application. Survey area.

SAN DIEGO

Survey area

California:
  San Diego

Area of Application. Survey area plus:

California:
  Imperial
Arizona:
  La Paz
  Yuma

SAN FRANCISCO

Survey area

California:
  Alameda
  Contra Costa
  Marin
  Napa
  San Francisco
  San Mateo
  Santa Clara
  Solano

Area of Application. Survey area plus:

California:
  Mendocino
  Santa Cruz
  Sonoma

SANTA BARBARA

Survey area

California:
  Santa Barbara

Area of Application. Survey area plus:

California:
  San Luis Obispo

STOCKTON

Survey area

Calfornia:
  San Joaquin

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[4] Only includes the China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).

[5] Only includes the Joshua Tree National Monument portion.

[6] All of San Bernardino County except that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.

[7] Does not include the Joshua Tree National Monument portion.

[8] Only that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.

Area of Application. Survey area plus:

California:
- Calaveras
- Stanislaus
- Tuolumne[9]

COLORADO

DENVER

Survey area

Colorado:
- Adams
- Arapahoe
- Boulder
- Denver
- Douglas
- Gilpin
- Jefferson

Area of Application. Survey area plus:

Colorado:
- Clear Creek
- Elbert
- Grand
- Jackson
- Larimer
- Logan
- Morgan
- Park
- Phillips
- Sedgwick
- Summit
- Washington
- Weld
- Yuma

SOUTHERN AND WESTERN COLORADO

Survey area

Colorado:
- El Paso
- Pueblo
- Teller

Area of Application. Survey area plus:

Colorado:
- Alamosa
- Archuleta
- Baca
- Bent
- Chaffee
- Cheyenne
- Conejos
- Costilla
- Crowley
- Custer
- Delta
- Dolores
- Eagle
- Fremont
- Garfield
- Gunnison
- Hinsdale
- Huerfano
- Kiowa
- Kit Carson
- Lake
- Las Animas
- Lincoln
- Mesa
- Mineral
- Montrose
- Otero
- Ouray
- Pitkin
- Prowers
- Rio Blanco
- Rio Grande
- Routt
- Saguache
- San Juan
- San Miguel

CONNECTICUT

NEW HAVEN—HARTFORD

Survey Area

Connecticut:

The following cities and towns in:
- *Fairfield County*
  - Stratford
- *Hartford County*
  - Bloomfield
  - East Granby
  - East Hartford
  - East Windsor
  - Enfield
  - Glastonbury
  - Hartford
  - Manchester
  - Newington
  - Rocky Hill
  - Suffield
  - West Hartford
  - Wethersfield
  - Windsor
  - Windsor Locks
- *Middlesex County*
  - Cromwell
  - Middlefield
- *New Haven County*
  - Branford
  - East Haven
  - Hamden
  - Meriden
  - Milford
  - New Haven
  - North Branford
  - North Haven
  - Orange
  - Wallingford
  - West Haven

Area of application. Survey area plus:

Connecticut:
- Fairfield County (nonsurvey area part)

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[9] Does not include the Yosemite National Park portion.

Hartford County (nonsurvey area part)
Litchfield County
Middlesex County (nonsurvey area part except Old Saybrook)
New Haven County (nonsurvey area part)
Tolland County (except Somers and Somersville)

NEW LONDON

Survey Area

Connecticut:
  The following cities and towns in:
  Middlesex County
  Old Saybrook
  New London County
  Baltic
  Bozrah
  East Lyme
  Gales Ferry
  Groton
  Hanover
  Jewett City
  Ledyard
  Lisbon
  Lyme
  Montville
  Mystic
  New London
  Noank
  Norwich
  Oakdale
  Old Mystic
  Old Lyme
  Pawcatuck
  Poquonock Bridge
  Preston
  Quaker Hill
  Stonington
  Submarine Base
  Uncasville
  Versailles
  Waterford
  West Mystic
Rhode Island:
  The following cities and towns in:
  Washington County
  Hopkinton
  Westerly

Area of application. Survey area plus:

Connecticut:
  New London (nonsurvey area part)
  Windham

DELAWARE

WILMINGTON

Survey Area

Delaware:
  Kent
  New Castle
Maryland:
  Cecil
New Jersey:
  Salem

Area of Application. Survey area plus:

Delaware:
  Sussex
Maryland:
  Caroline
  Dorchester
  Kent
  Queen Annes
  Somerset
  Talbot
  Wicomico
  Worcester[10]

DISTRIC OF COLUMBIA

WASHINGTON, DC

Survey Area

District of Columbia:
  Washington, D.C.
Maryland:
  Charles
  Frederick
  Montgomery
  Prince Georges
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Marys
Virginia:
  Fauquier
  King George
  Stafford

FLORIDA

COCOA BEACH-MELBOURNE

Survey Area

Florida:
  Brevard

Area of Application. Survey area plus:

Florida:
  Indian River

JACKSONVILLE

Survey Area

Florida:
  Alachua
  Baker

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[10] Does not include the Assateague Island portion.

Clay
Duval
Nassau
St. Johns

Area of Application. Survey area plus:

Florida:
  Bradford
  Citrus
  Columbia
  Dixie
  Flagler
  Gilchrist
  Hamilton
  Lafayette
  Lake
  Levy
  Madison
  Marion
  Putnam
  Sumter
  Suwannee
  Taylor
  Union
Georgia:
  Brantley
  Camden
  Charlton
  Glynn
  Pierce

MIAMI

Survey Area

Florida:
  Dade

Area of Application. Survey area plus:

Florida:
  Broward
  Collier
  Glades
  Hendry
  Highlands
  Martin
  Monroe
  Okeechobee
  Palm Beach
  St. Lucie

ORLANDO

Survey Area

Florida:
  Orange
  Osceola
  Seminole

Area of Application. Survey arec plus:

Florida:
  Volusia

PANAMA CITY

Survey Area

Florida:
  Bay
  Gulf

Area of Application. Survey area plus:

Florida:
  Calhoun
  Franklin
  Gadsden
  Holmes
  Jackson
  Jefferson
  Leon
  Liberty
  Wakulla
  Washington

PENSACOLA

Survey Area

Florida:
  Escambia
  Santa Rosa

Area of Application. Survey area plus:

Florida
  Okaloosa
  Walton
Alabama:
  Baldwin
  Clarke
  Conecuh
  Covington
  Escambia
  Mobile
  Monroe
  Washington

TAMPA-ST. PETERSBURG

Survey Area

Florida:
  Hillsborough
  Pasco
  Pinellas

Area of Application. Survey area plus:

Florida:
  Charlotte
  De Soto
  Hardee
  Hernando
  Lee
  Manatee
  Polk
  Sarasota

GEORGIA

ALBANY

Survey Area

Georgia:
  Colquitt
  Dougherty
  Lee

Mitchell
Worth

Area of Application. Survey area plus:

GEORGIA:

Atkinson
Baker
Ben Hill
Berrien
Brooks
Calhoun
Clinch
Coffee
Cook
Decatur
Echols
Grady
Irwin
Lanier
Lowndes
Randolph
Sumter
Terrell
Thomas
Tift
Turner
Ware

ATLANTA

Survey Area

Georgia:
  Butts
  Cherokee
  Clayton
  Cobb
  De Kalb
  Douglas
  Fayette
  Forsyth
  Fulton
  Gwinnett
  Henry
  Newton
  Paulding
  Rockdale
  Walton

Area of Application. Survey area plus:

Georgia:
  Banks
  Barrow
  Bartow
  Carroll
  Chattooga
  Clarke
  Coweta
  Dawson
  Fannin
  Floyd
  Franklin
  Gilmer
  Gordon
  Greene
  Habersham
  Hall
  Haralson
  Heard
  Jackson
  Lumpkin
  Madison
  Morgan
  Murray
  Oconee
  Oglethorpe
  Pickens
  Pike
  Polk
  Rabun
  Spalding
  Stephens
  Towns
  Union
  White
  Whitfield

AUGUSTA

Survey Area

Georgia:
  Columbia
  McDuffie
  Richmond
South Carolina:
  Aiken

Area of Application. Survey area plus:

Georgia:
  Burke
  Elbert
  Emanuel
  Glascock
  Hart
  Jefferson
  Jenkins
  Lincoln
  Taliaferro
  Warren
  Wilkes
South Carolina:
  Allendale
  Bamberg
  Barnwell
  Edgefield
  McCormick

COLUMBUS

Survey Area

Georgia (Counties):
  Chattahoochee
Georgia (Consolidated government):
  Columbus
Alabama:
  Autaugo
  Elmore
  Lee
  Macon
  Montgomery
  Russel

Area of Application. Survey area plus:

Georgia:
- Harris
- Marion
- Meriwether
- Quitman
- Schley
- Stewart
- Talbot
- Taylor
- Troup
- Webster

Alabama:
- Bullock
- Butler
- Chambers
- Chilton
- Coosa
- Crenshaw
- Dallas
- Lowndes
- Pike
- Tallapoosa
- Wilcox

MACON

Survey area

Georgia:
- Bibb
- Houston
- Jones
- Laurens
- Twiggs
- Wilkinson

Area of Application. Survey area plus:

Georgia:
- Baldwin
- Bleckley
- Crawford
- Crisp
- Dodge
- Dooly
- Hancock
- Jasper
- Johnson
- Lamar
- Macon
- Monroe
- Montgomery
- Peach
- Pulaski
- Putnam
- Telfair
- Treutlen
- Upson
- Washington
- Wheeler
- Wilcox

SAVANNAH

Survey Area

Georgia:
- Bryan
- Chatham
- Effingham
- Liberty

Area of Application. Survey area plus:

Georgia:
- Appling
- Bacon
- Bulloch
- Candler
- Evans
- Jeff Davis
- Long
- McIntosh
- Screven
- Tattnall
- Toombs
- Wayne

South Carolina:
- Beaufort [11]
- Hampton
- Jasper

HAWAII

Survey area

Hawaii:
- Honolulu

Area of Application. Survey area plus:

Hawaii:
- Hawaii
- Kauai [12]
- Maui [13]

IDAHO

BOISE

Survey Area

Idaho:
- Ada
- Boise
- Canyon
- Elmore
- Gem

Area of Application. Survey area plus:

Idaho:
- Adams
- Bannock
- Bear Lake
- Bingham
- Blaine
- Bonneville
- Butte
- Camas
- Caribou
- Cassia

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[11] The portion south of Broad River.

[12] Kauai county includes the islands of Kauai and Niihau.

[13] Mauai county includes the islands of Mauai, Molokai, Lanai and Kohoolawe.

- Clark
- Custer
- Franklin
- Fremont
- Gooding
- Jefferson
- Jerome
- Lemhi
- Lincoln
- Madison
- Minidoka
- Oneida
- Owyhee
- Payette
- Power
- Teton
- Twin Falls
- Valley
- Washington

ILLINOIS

CHAMPAIGN-URBANA

Survey area

- Illinois:
  - Champaign
  - Menard
  - Sangamon
  - Vermilion

Area of Application. Survey area plus:

- Illinois:
  - Christian
  - Clerk
  - Coles
  - Crawford
  - Cumberland
  - De Witt
  - Douglas
  - Edgar
  - Ford
  - Jasper
  - Logan
  - McLean
  - Macon
  - Moultrie
  - Piatt
  - Shelby

CHICAGO

Survey area

- Illinois:
  - Cook
  - Du Page
  - Kane
  - Lake
  - McHenry
  - Will

Area of Application. Survey area plus:

- Illinois:
  - Boone
  - De Kalb
  - Grundy
  - Iroquois
  - Kankakee
  - Kendall
  - La Salle
  - Lee
  - Livingston
  - Ogle
  - Stephenson
  - Winnebago
- Indiana:
  - Benton
  - Jasper
  - Lake
  - La Porte
  - Newton
  - Porter
  - Pulaski
  - Starke

INDIANA

BLOOMINGTON-BEDFORD-WASHINGTON

Survey area

- Indiana:
  - Daviess
  - Greene
  - Knox
  - Lawrence
  - Martin
  - Monroe
  - Orange

Area of Application. Survey area plus:

- Indiana:
  - Brown
  - Brawford
  - Dubois
  - Gibson
  - Jackson
  - Owen
  - Perry
  - Pike
  - Posey
  - Spencer
  - Vanderburgh
  - Warrick
  - Washington
- Illinois:
  - Edwards
  - Gallatin
  - Hardin
  - Lawrence
  - Richland
  - Wabash
  - White
- Kentucky:
  - Crittenden
  - Daviess
  - Hancock
  - Henderson
  - Livingston
  - McLean
  - Ohio
  - Union
  - Webster

FT. WAYNE-MARION

Survey area

Indiana:
- Adams
- Allen
- DeKalb
- Grant
- Huntington
- Wells

Area of Application. Survey area plus:

Indiana:
- Blackford
- Carroll
- Cass
- Elkhart
- Fulton
- Howard
- Jay
- Kosciusko
- Lagrange
- Marshall
- Miami
- Noble
- St. Joseph
- Steuben
- Wabash
- White
- Whitley

Ohio:
- Allen
- Defiance
- Fulton
- Henry
- Mercer
- Paulding
- Putnam
- Van Wert
- Williams

INDIANAPOLIS

Survey area

Indiana:
- Boone
- Hamilton
- Hancock
- Hendricks
- Johnson
- Marion
- Morgan
- Shelby

Area of Application. Survey area plus:

Indiana:
- Bartholomew
- Clay
- Clinton
- Decatur
- Delaware
- Fayette
- Fountain
- Henry
- Madison
- Montgomery
- Parke
- Putnam
- Rush
- Sullivan
- Tippecanoe
- Tipton
- Vermillion
- Vigo
- Warren

IOWA

CEDAR RAPIDS-IOWA CITY

Survey area

Iowa:
- Benton
- Black Hawk
- Johnson
- Linn

Area of Application. Survey area plus:

Iowa:
- Allamakee
- Bremer
- Buchanan
- Butler
- Cedar
- Chickasaw
- Clayton
- Davis
- Delaware
- Fayette
- Floyd
- Grundy
- Henry
- Howard
- Iowa
- Jefferson
- Jones
- Keokuk
- Mitchell
- Tama
- Van Buren
- Wapello
- Washington
- Winneshiek

DAVENPORT-ROCK ISLAND-MOLINE

Survey area

Iowa:
- Scott

Illinois:
- Henry
- Rock Island

Area of Application. Survey area plus:

Iowa:
- Des Moines
- Lee
- Louisa
- Muscatine

Illinois:
- Adams
- Brown

Bureau
Cass
Fulton
Hancock
Henderson
Knox
McDonough
Marshall
Mason
Mercer
Peoria
Putnam
Schuyler
Stark
Tazewell
Warren
Woodford

DES MOINES

Survey area

Iowa:
  Polk
  Story
  Warren

Area of Application. Survey area plus:

Iowa:
  Adair
  Appanoose
  Boone
  Calhoun
  Carroll
  Cerro Gordo
  Clarke
  Dallas
  Decatur
  Franklin
  Greene
  Guthrie
  Hamilton
  Hancock
  Hardin
  Humboldt
  Jasper
  Kossuth
  Lucas
  Madison
  Mahaska
  Marion
  Marshall
  Monroe
  Poweshiek
  Ringgold
  Union
  Wayne
  Webster
  Winnebago
  Worth
  Wright

DUBUQUE

Survey area

Iowa:
  Clinton
  Dubuque
  Jackson
Illinois:
  Carroll
  Jo Daviess
  Whiteside

Area of Application. Survey area.

KANSAS:

TOPEKA

Survey area

Kansas:
  Geary
  Jefferson
  Osage
  Shawnee

Area of Application. Survey area plus:

Kansas:
  Brown
  Clay
  Cloud
  Coffey
  Dickinson
  Jackson
  Lyon
  Marshall
  Morris
  Nemaha
  Ottawa
  Pottawatomie
  Republic
  Riley
  Saline
  Webaunsee
  Washington

WICHITA

Survey area

Kansas:
  Butler
  Sedgwick

Area of Application. Survey area plus:

Kansas:
  Barber
  Barton
  Chase
  Chautauqua
  Cheyenne
  Clark
  Comanche
  Cowley
  Decatur
  Edwards
  Elk
  Ellis
  Ellsworth
  Finney
  Ford
  Gove
  Graham
  Grant

Gray
Greeley
Greenwood
Hamilton
Harper
Harvey
Haskell
Hodgeman
Jewell
Kearny
Kingman
Kiowa
Labette
Lane
Lincoln
Logan
McPherson
Marion
Meade
Mitchell
Montgomery
Morton
Neosho
Ness
Norton
Osborne
Pawnee
Phillips
Pratt
Rawlins
Reno
Rice
Rooks
Rush
Russell
Scott
Seward
Sheridan
Sherman
Smith
Stafford
Stanton
Stevens
Sumner
Thomas
Trego
Wallace
Wichita
Wilson
Woodson

KENTUCKY

LEXINGTON

Survey area

Kentucky:
  Bourbon
  Clark
  Fayette
  Jessamine
  Madison
  Scott
  Woodford

Area of Application. Survey area plus:

Kentucky:
  Anderson
  Bath
  Bell
  Boyle
  Breathitt
  Casey
  Clay
  Estill
  Fleming
  Franklin
  Garrard
  Green
  Harrison
  Jackson
  Knott
  Knox
  Laurel
  Lee
  Leslie
  Lincoln
  McCreary
  Marion
  Menifee
  Mercer
  Montgomery
  Morgan
  Nicholas
  Owen
  Owsley
  Perry
  Powell
  Pulaski
  Robertson
  Rockcastle
  Rowan
  Taylor
  Washington
  Wayne
  Whitley
  Wolfe

LOUISVILLE

Survey area

Kentucky:
  Bullitt
  Hardin
  Jefferson
  Oldham
Indiana:
  Clark
  Floyd
  Jefferson

Area of Application. Survey area plus:

Kentucky:
  Breckinridge
  Grayson
  Hart
  Henry
  Larue
  Meade
  Nelson
  Shelby
  Spencer
  Trimble

Indiana:
- Harrison
- Jennings
- Scott

LOUISIANA

LAKE CHARLES-ALEXANDRIA

Survey area

Louisiana:
- Allen
- Beauregard
- Calcasieu
- Grant
- Rapides
- Sabine
- Vernon

Area of Application. Survey area plus:

Louisiana:
- Acadia
- Avoyelles
- Caldwell
- Cameron
- Catahoula
- Concordia
- Evangeline
- Franklin
- Jefferson Davis
- Lafayette
- La Salle
- Madison
- Natchitoches
- St. Landry
- Tensas
- Vermilion
- Winn

NEW ORLEANS

Survey area

Louisiana:
- Jefferson
- Orleans
- Plaquemines
- St. Bernard
- St. Tammany

Area of Application. Survey area plus:

Louisiana:
- Ascension
- Assumption
- East Baton Rouge
- East Feliciana
- Iberia
- Iberville
- Lafourche
- Livingston
- Pointe Coupee
- St. Charles
- St. Helena
- St. James
- St. John the Baptist
- St. Martin
- St. Mary
- Tangipahoa
- Terrebonne
- Washington
- West Baton Rouge
- West Feliciana

SHREVEPORT

Survey area

Louisiana:
- Bossier
- Caddo
- Webster

Area of Application. Survey area plus:

Louisiana:
- Bienville
- Claiborne
- De Soto
- East Carroll
- Jackson
- Lincoln
- Morehouse
- Ouachita
- Red River
- Richland
- Union
- West Carroll

Texas:
- Cherokee
- Gregg
- Harrison
- Panola
- Rusk

MAINE

AUGUSTA

Survey area

Maine:
- Kennebec
- Knox
- Lincoln

Area of Application. Survey area.

CENTRAL AND NORTHERN MAINE

Survey area

Maine:
- Aroostook
- Penobscot

Area of Application. Survey area plus:

Maine:
- Hancock
- Piscataquis
- Somerset
- Waldo
- Washington

PORTLAND

Survey area

Maine:
- Androscoggin

- Cumberland
- Sagadahoc

Area of Application. Survey area plus:

- Maine:
  - Franklin
  - Oxford
- New Hampshire:
  - Coos

MARYLAND

BALTIMORE

Survey area

- Maryland:
  - Baltimore City
  - Anne Arundel
  - Baltimore
  - Carroll
  - Harford
  - Howard

Area of Application. Survey area

HAGERSTOWN-MARTINSBURG-CHAMBERSBURG

Survey area

- Maryland:
  - Washington
- Pennsylvania:
  - Franklin
- West Virginia
  - Berkeley

Area of Application: Survey area plus:

- Maryland
  - Allegany
  - Garrett
- Virginia (cities):
  - Harrisonburg City
  - Winchester City
- Virginia (counties):
  - Clarke
  - Culpeper
  - Frederick
  - Greene
  - Madison
  - Page
  - Rappahannock
  - Rockingham
  - Shenandoah
  - Warren
- West Virginia
  - Hampshire
  - Hardy
  - Jefferson
  - Mineral
  - Morgan

MASSACHUSETTS

BOSTON

Survey Area

- Massachusetts:
- The following cities and towns in:
  - *Essex County*
    - Beverly
    - Boxford
    - Danvers
    - Hamilton
    - Lynn
    - Lynnfield
    - Manchester
    - Marblehead
    - Middleton
    - Nahant
    - Peabody
    - Salem
    - Saugus
    - South Hamilton
    - Swampson
    - Topsfield
    - Wenham
  - *Middlesex County*
    - Acton
    - Arlington
    - Ashland
    - Bedford
    - Belmont
    - Boxborough
    - Burlington
    - Cambridge
    - Carlisle
    - Concord
    - Everett
    - Framingham
    - Holliston
    - Lexington
    - Lincoln
    - Malden
    - Medford
    - Melrose
    - Natick
    - Newton
    - North Reading
    - North Wilmington
    - Reading
    - Sherborn
    - Somerville
    - Stoneham
    - Sudbury
    - Wakefield
    - Waltham
    - Watertown
    - Wayland
    - West Concord
    - Weston
    - Wilmington
    - Winchester
    - Woburn
  - *Norfolk County*
    - Bellingham
    - Braintree
    - Brookline
    - Canton
    - Cohasset
    - Dedham
    - Dover
    - East Walpole
    - Foxborough
    - Franklin

Harding
Holbrook
Islington
Medfield
Medway
Millis
Milton
Needham
Norfolk
North Cohasset
Norwood
Quincy
Randolph
Sharon
South Walpole
Stoughton
Walpole
Wellesley
Westwood
Weymouth
Wrentham
Plymouth County
Abington
Duxbury
Hanover
Hanson
Hingham
Hull
Kingston
Marshfield
Marshfield Hills
North Scituate
Norwell
Oceanbluff
Pembroke
Rockland
Scituate
Shore Acres
South Duxbury
South Hingham
West Hanover
Suffolk County

Area of Application. Survey area plus:

Massachusetts:
Barnstable
Dukes
Nantucket
Plymouth (non-survey area part)
The following cities and towns in:
Bristol County
Easton
Essex County
Andover
Essex
Gloucester
Ipswich
Lawrence
Methuen
Rockport
Rowley
Middlesex County
Ayer
Billerica
Chelmsford
Dracut
Dunstable
Groton
Hopkinton
Hudson
Littleton
Lowell
Marlborough
Maynard
Pepperell
Stow
Tewksbury
Tyngsborough
Westford
Norfolk County
Avon

CENTRAL AND WESTERN MASSACHUSETTS

Survey area

Massachusetts:
The following cities and towns in:
Hampden County
Agawam
Chicopee
East Longmeadow
Feeding Hills
Hampden
Holyoke
Longmeadow
Ludlow
Monson
Palmer
Southwick
Springfield
Three Rivers
Westfield
West Springfield
Wilbraham
Hampshire County
Easthampton
Granby
Hadley
Northampton
South Hadley
Worcester County
Warren
West Warren
Connecticut:
Tolland County
Somers
Somersville

Area of Application. Survey area plus:

Massachusetts:
Berkshire
Franklin
Worcester (except Blackstone and Millville)
The following towns and cities in:
Hampshire County
Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington

- Middlefield
- Pelham
- Plainfield
- Southampton
- Ware
- Westhampton
- Williamsburg
- Worthington
- *Hampden County*
- Blandford
- Brimfield
- Chester
- Granville
- Holland
- Montgomery
- Russell
- Tolland
- Wales
- *Middlesex County*
- Ashby
- Shirley
- Townsend

New Hampshire:
- Belknap
- Carroll
- Cheshire
- Grafton
- Hillsborough
- Merrimack
- Sullivan

Vermont:
- Addison
- Bennington
- Caledonia
- Essex
- Lamoille
- Orange
- Orleans
- Rutland
- Washington
- Windham
- Windsor

MICHIGAN

DETROIT

Survey area

Michigan:
- Lapeer
- Livingston
- Macomb
- Oakland
- St. Clair
- Wayne

Area of Application. Survey area plus:

Michigan:
- Arenac
- Bay
- Clare
- Clinton
- Eaton
- Genesee
- Gladwin
- Gratiot
- Huron
- Ingham
- Isabella
- Lenawee
- Midland
- Monroe
- Saginaw
- Sanilac
- Shiawassee
- Tuscola
- Washtenaw

Ohio:
- Lucas
- Wood

NORTHWESTERN MICHIGAN

Survey area

Michigan:
- Delta
- Dickinson
- Marquette

Area of Application. Survey area plus:

Michigan:
- Alger
- Baraga
- Chippewa
- Gogebic
- Houghton
- Iron
- Keweenaw
- Luce
- Mackinac
- Menominee
- Ontonagon
- Schoolcraft

OSCODA-ALPENA

Survey area

Michigan:
- Alcona
- Alpena
- Iosco

Area of Application. Survey area plus:

Michigan:
- Antrim
- Benzie
- Charlevoix
- Cheboygan
- Crawford
- Emmet
- Grand Traverse
- Kalkaska
- Leelanau
- Manistee
- Missaukee
- Montmorency
- Ogemaw
- Oscoda
- Otsego
- Presque Isle
- Roscommon
- Wexford

SOUTHWESTERN MICHIGAN

Survey area

- Michigan:
  - Barry
  - Calhoun
  - Kalamazoo
  - Van Buren

Area of Application. Survey area plus:

- Michigan:
  - Allegan
  - Berrien
  - Branch
  - Cass
  - Hillsdale
  - Ionia
  - Jackson
  - Kent
  - Lake
  - Mason
  - Mecosta
  - Montcalm
  - Muskegon
  - Newaygo
  - Oceana
  - Osceola
  - Ottawa
  - St. Joseph

MINNESOTA

DULUTH

Survey area

- Minnesota:
  - Carlton
  - St. Louis
- Wisconsin:
  - Douglas

Area of Application. Survey area plus:

- Minnesota:
  - Aitkin
  - Beltrami
  - Cass
  - Cook
  - Crow Wing
  - Hubbard
  - Itasca
  - Koochiching
  - Lake
  - Lake of the Woods
  - Pine
- Wisconsin:
  - Ashland
  - Bayfield
  - Burnett
  - Iron
  - Sawyer
  - Washburn

MINNEAPOLIS-ST. PAUL

Survey area

- Minnesota:
  - Anoka
  - Carver
  - Chisago
  - Dakota
  - Hennepin
  - Ramsey
  - Scott
  - Washington
  - Wright
- Wisconsin:
  - St. Croix

Area of Application. Survey area plus:

- Minnesota:
  - Benton
  - Big Stone
  - Blue Earth
  - Brown
  - Chippewa
  - Cottonwood
  - Dodge
  - Douglas
  - Faribault
  - Freeborn
  - Goodhue
  - Grant
  - Isanti
  - Kanabec
  - Kandiyohi
  - Lac Qui Parle
  - Le Sueur
  - McLeod
  - Martin
  - Meeker
  - Mille Lacs
  - Morrison
  - Mower
  - Nicollet
  - Olmsted
  - Pope
  - Redwood
  - Renville
  - Rice
  - Sherburne
  - Sibley
  - Stearns
  - Steele
  - Stevens
  - Swift
  - Todd
  - Traverse
  - Wadena
  - Waseca
  - Watonwan
  - Yellow Medicine
- Wisconsin:
  - Pierce
  - Polk

MISSISSIPPI

BILOXI

Survey area

- Mississippi:
  - Hancock

- Harrison
- Jackson
- Stone

Area of Application. Survey area plus:

- Mississippi:
  - George
  - Pearl River

Survey area

- Mississippi:
  - Clay
  - Lee
  - Lowndes
  - Monroe
  - Oktibbeha

Area of Application. Survey area plus:

- Mississippi:
  - Alcorn
  - Bolivar
  - Calhoun
  - Caroll
  - Chickasaw
  - Choctaw
  - Coahoma
  - Grenada
  - Itawamba
  - Lafayette
  - Leflore
  - Montgomery
  - Noxubee
  - Panola
  - Pontotoc[14]
  - Prentiss
  - Quitman
  - Sunflower
  - Tallahatchie
  - Tishomingo
  - Union
  - Washington
  - Webster
  - Winston
  - Yalobusha

JACKSON

Survey area

- Mississippi:
  - Adams
  - Claiborne
  - Hinds
  - Jefferson
  - Rankin
  - Warren

Area of Application. Survey area plus:

- Mississippi:
  - Amite
  - Attala
  - Copiah
  - Covington
  - Franklin
  - Holmes
  - Humphreys
  - Issaquena
  - Jefferson Davis
  - Lamar
  - Lawrence
  - Lincoln
  - Madison
  - Marion
  - Pike
  - Scott
  - Sharkey
  - Simpson
  - Smith
  - Walthall
  - Wilkinson
  - Yazoo

MERIDIAN

Survey area

- Mississippi:
  - Forrest
  - Lauderdale
- Alabama:
  - Choctaw

Area of Application. Survey area plus:

- Mississippi:
  - Clarke
  - Greene
  - Jasper
  - Jones
  - Kemper
  - Leake
  - Neshoba
  - Newton
  - Perry
  - Wayne
- Alabama:
  - Sumter

MISSOURI

KANSAS CITY

Survey area

- Missouri:
  - Cass
  - Clay
  - Jackson
  - Platte
  - Ray
- Kansas:
  - Johnson
  - Leavenworth
  - Wyandotte

Area of Application. Survey area plus:

- Missouri:
  - Adair
  - Andrew
  - Atchison
  - Bates
  - Buchanan

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[14] Excluding Holly Springs National Forest.

  - Caldwell
  - Carroll
  - Chariton
  - Clinton
  - Cooper
  - Daviess
  - De Kalb
  - Gentry
  - Grundy
  - Harrison
  - Henry
  - Holt
  - Howard
  - Johnson
  - Lafayette
  - Linn
  - Livingston
  - Macon
  - Mercer
  - Nodaway
  - Pettis
  - Putnam
  - Saline
  - Schuyler
  - Sullivan
  - Worth
- Kansas:
  - Allen
  - Anderson
  - Atchison
  - Bourbon
  - Doniphan
  - Douglas
  - Franklin
  - Linn
  - Miami

Survey area

- Missouri:
  - St. Louis City
  - Franklin
  - Jefferson
  - St. Charles
  - St. Louis
- Illinois:
  - Clinton
  - Madison
  - Monroe
  - St. Clair

Area of Application. Survey area plus:

- Missouri:
  - Audrain
  - Boone
  - Callaway
  - Clark
  - Cole
  - Crawford
  - Gasconade
  - Knox
  - Lewis
  - Lincoln
  - Marion
  - Monroe
  - Montgomery
  - Osage
  - Pike
  - Ralls
  - Randolph
  - St. Francois
  - Ste. Genevieve
  - Scotland
  - Shelby
  - Warren
  - Washington
- Illinois:
  - Alexander
  - Bond
  - Calhoun
  - Clay
  - Effingham
  - Fayette
  - Franklin
  - Greene
  - Hamilton
  - Jackson
  - Jefferson
  - Jersey
  - Johnson
  - Macoupin
  - Marion
  - Massac
  - Montgomery
  - Morgan
  - Perry
  - Pike
  - Pope
  - Pulaski
  - Randolph
  - Saline
  - Scott
  - Union
  - Washington
  - Wayne
  - Williamson

SOUTHERN MISSOURI

Survey area

- Missouri:
  - Christian
  - Greene
  - Laclede
  - Phelps
  - Pulaski
  - Webster

Area of Application. Survey area plus:

- Missouri:
  - Barry
  - Barton
  - Benton
  - Bollinger
  - Butler
  - Camden
  - Cape Girardeau
  - Carter
  - Cedar
  - Dade
  - Dallas
  - Dent
  - Douglas

  Hickory
  Howell
  Iron
  Jasper
  Lawrence
  McDonald
  Madison
  Maries
  Miller
  Mississippi
  Moniteau
  Morgan
  New Madrid
  Newton
  Oregon
  Ozark
  Perry
  Polk
  Reynolds
  Ripley
  St. Clair
  Scott
  Shannon
  Stoddard
  Stone
  Taney
  Texas
  Vernon
  Wayne
  Wright
Kansas:
  Cherokee
  Crawford

MONTANA

GREAT FALLS

Survey area

Montana:
  Cascade
  Lewis and Clark
  Yellowstone

Area of Application. Survey area plus:

Montana:
  Beaverhead
  Big Horn
  Blaine
  Broadwater
  Carbon
  Carter
  Chouteau
  Custer
  Daniels
  Dawson
  Deer Lodge
  Fallon
  Fergus
  Flathead
  Gallatin
  Garfield
  Glacier
  Golden Valley
  Granite
  Hill
  Jefferson
  Judith Basin
  Lake
  Liberty
  Lincoln
  McCone
  Madison
  Meagher
  Mineral
  Missoula
  Musselshell
  Park
  Petroleum
  Phillip
  Pondera
  Powder River
  Powell
  Prairie
  Ravalli
  Richland
  Roosevelt
  Rosebud
  Sanders
  Sheridan
  Silver Bow
  Stillwater
  Sweet Grass
  Teton
  Toole
  Treasure
  Valley
  Wheatland
  Wibaux
  Wyoming
  Big Horn
  Park

NEBRASKA

OMAHA

Survey area

Nebraska:
  Douglas
  Sarpy
  Lancaster
Iowa:
  Pottawattamie

Area of Application. Survey area plus:

Nebraska:
  Adams
  Antelope
  Arthur
  Blaine
  Boone
  Boyd
  Brown
  Buffalo
  Burt
  Butler
  Cass
  Cedar
  Chase
  Cherry
  Clay

- Colfax
- Cuming
- Custer
- Dakota
- Dawson
- Dixon
- Dodge
- Dundy
- Fillmore
- Franklin
- Frontier
- Furnas
- Gage
- Garfield
- Gosper
- Grant
- Greeley
- Hall
- Hamilton
- Harlan
- Hayes
- Hitchcock
- Holt
- Hooker
- Howard
- Jefferson
- Johnson
- Kearney
- Keith
- Keya Paha
- Knox
- Lincoln
- Logan
- Loup
- McPherson
- Madison
- Merrick
- Nance
- Nemaha
- Nuckolls
- Otoe
- Pawnee
- Perkins
- Phelps
- Pierce
- Platte
- Polk
- Red Willow
- Richardson
- Rock
- Saline
- Saunders
- Seward
- Sherman
- Stanton
- Thayer
- Thomas
- Thurston
- Valley
- Washington
- Wayne
- Webster
- Wheeler
- York

- Iowa:
  - Adams
  - Audubon
  - Buena Vista
  - Cass
  - Cherokee
  - Clay
  - Crawford
  - Fremont
  - Harrison
  - Ida
  - Mills
  - Monona
  - Montgomery
  - O'Brien
  - Page
  - Palo Alto
  - Plymouth
  - Pocahontas
  - Sac
  - Shelby
  - Sioux
  - Taylor
  - Woodbury

NEVADA

LAS VAGAS

Survey area

- Nevada
  - Clark
  - Nye

Area of Application. Survey area plus:

- Nevada
  - Esmeralda
  - Lincoln
- Arizona:
  - Mohave

RENO

Survey area

- Nevada:
  - Lyon
  - Mineral
  - Storey
  - Washoe

Area of Application. Survey area plus:

- Nevada (cities)
  - Carson City
- Nevada (counties)
  - Churchill
  - Douglas
  - Elko
  - Eureka
  - Humboldt
  - Lander
  - Pershing
  - White Pine
- California:
  - Lassen
  - Mono[15]

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[15] Does not cover locations to which Bridgeport, Calif. special schedule applies.

Survey area

- New Hampshire:
  - Rockingham (except the following cities and towns: Newton; Plaistow; Salem; and Westville)
  - Stafford
- Maine:
  - York
- Massachusetts:
- The following cities and towns in:
  - *Essex County*
  - Amesbury
  - Georgetown
  - Groveland
  - Haverhill
  - Merrimac
  - Newbury
  - Newburyport
  - North Andover
  - Salisbury
  - South Byfield
  - West Newbury

Area of Application. Survey area plus:

- New Hampshire:
- The following towns in:
  - *Rockingham County*
  - Newton
  - Plaistow
  - Salem

NEW MEXICO

Albuquerque

Survey area

- New Mexico
  - Bernalillo
  - Sandoval

Area of Application. Survey area plus:

- New Mexico
  - Catron
  - Cibola
  - Colfax
  - Curry
  - De Baca
  - Guadalupe
  - Harding
  - Lincoln [16]
  - Los Alamos
  - Mora
  - Quay
  - Rio Arriba
  - Roosevelt
  - San Miguel
  - Santa Fe
  - Socorro [16]
  - Taos
  - Torrance
  - Union
  - Valencia

NEW YORK

ALBANY-SCHENECTADY-TROY

Survey area

- New York
  - Albany
  - Montgomery
  - Rensselaer
  - Saratoga
  - Schenectady

Area of Application. Survey area plus:

- New York:
  - Columbia
  - Fulton
  - Greene
  - Schoharie
  - Warren
  - Washington

BUFFALO

Survey area

- New York:
  - Erie
  - Niagara

Area of Application. Survey area plus:

- New York:
  - Cattaraugus
  - Chautauqua

NEWBURGH

Survey area

- New York:
  - Dutchess
  - Orange
  - Ulster

Area of Application. Survey area plus:

- New York:
  - Delaware
  - Sullivan

Survey area

- New York:
  - Bronx
  - Kings
  - Nassau
  - New York
  - Putnam
  - Queens
  - Richmond
  - Rockland
  - Suffolk
  - Westchester
- New Jersey:
  - Bergen
  - Essex
  - Hudson
  - Middlesex
  - Monmouth
  - Morris

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[16] Does not include White Sands Proving Ground portion.

Passaic
Somerset
Union

Area of Application. Survey area plus:

New Jersey:
  Sussex

NORTHERN NEW YORK

Survey area

New York:
  Clinton
  Franklin
  Jefferson
  St. Lawrence
Vermont:
  Chittenden
  Franklin
  Grand Isle

Area of Application. Survey area plus:

New York:
  Essex
  Lewis

ROCHESTER

Survey area

New York:
  Livingston
  Monroe
  Ontario
  Orleans
  Steuben
  Wayne

Area of Application. Survey area plus:

New York:
  Allegany
  Chemung
  Genesee
  Schuyler
  Seneca
  Wyoming
  Yates

SYRACUSE-UTICA-ROME

Survey area

New York:
  Herkimer
  Madison
  Oneida
  Onondaga
  Oswego

Area of Application. Survey area plus:

New York:
  Broome
  Cayuga
  Chenango
  Cortland
  Hamilton
  Otsego
  Tioga
  Tompkins

NORTH CAROLINA

ASHEVILLE

Survey area

North Carolina:
  Buncombe
  Haywood
  Henderson
  Madison
  Transylvania

Area of Application. Survey area plus:

North Carolina:
  Avery
  Burke
  Caldwell
  Cherokee
  Clay
  Graham
  Jackson
  McDowell
  Macon
  Mitchell
  Polk
  Rutherford
  Swain
  Yancey

CENTRAL NORTH CAROLINA

Survey area

North Carolina
  Cumberland
  Durham
  Edgecombe
  Harnett
  Johnston
  Orange
  Wake
  Wayne
  Wilson

Area of Application. Survey area plus:

North Carolina
  Alamance
  Bladen
  Caswell
  Chatham
  Davidson
  Davie
  Forsyth
  Franklin
  Granville
  Guilford
  Halifax
  Hoke
  Lee
  Montgomery
  Moore
  Nash
  Northampton
  Person
  Randolph

  - Richmond
  - Robeson
  - Rockingham
  - Sampson
  - Scotland
  - Stokes
  - Surry
  - Vance
  - Warren
  - Yadkin
- South Carolina:
  - Dillon
  - Marion
  - Marlboro

CHARLOTTE

Survey area

- North Carolina:
  - Cabarrus
  - Gaston
  - Mecklenburg
  - Rowan
  - Union

Area of Application. Survey area plus:

- North Carolina:
  - Alexander
  - Anson
  - Catawba
  - Cleveland
  - Iredell
  - Lincoln
  - Stanly
  - Wilkes
- South Carolina:
  - Chesterfield
  - Lancaster
  - York

SOUTHEASTERN NORTH CAROLINA

Survey area

- North Carolina:
  - Brunswick
  - Carteret
  - Columbus
  - Craven
  - Jones
  - Lenoir
  - New Hanover
  - Onslow
  - Pamlico
  - Pender
- South Carolina:
  - Harry

Area of Application. Survey area plus:

- North Carolina:
  - Beaufort
  - Bertie
  - Dare
  - Duplin
  - Greene
  - Hertford
  - Hyde
  - Martin
  - Pitt
  - Tyrrell
  - Washington

NORTH DAKOTA

Survey area

- North Dakota:
  - Burleigh
  - Cass
  - Grand Forks
  - McLean
  - Mercer
  - Morton
  - Oliver
  - Traill
  - Ward
- Minnesota:
  - Clay
  - Polk

Area of Application. Survey area plus:

- North Dakota:
  - Adams
  - Barnes
  - Benson
  - Billings
  - Bortineau
  - Bowman
  - Burke
  - Cavalier
  - Dickey
  - Divide
  - Dunn
  - Eddy
  - Emmons
  - Foster
  - Golden Valley
  - Grant
  - Griggs
  - Hettinger
  - Kidder
  - La Moure
  - Logan
  - McHenry
  - McIntosh
  - McKenzie
  - Mountrail
  - Nelson
  - Pembina
  - Pierce
  - Ramsey
  - Ransom
  - Renville
  - Richland
  - Rolette
  - Sargent
  - Sheridan
  - Sioux
  - Slope
  - Stark
  - Steele
  - Stutsman
  - Towner
  - Walsh

- Wells
- Williams

- Minnesota:
  - Becker
  - Clearwater
  - Kittson
  - Mahnomen
  - Marshall
  - Norman
  - Otter Tail
  - Pennington
  - Red Lake
  - Roseau
  - Wilkin

OHIO

CINCINNATI

Survey area

- Ohio:
  - Clermont
  - Hamilton
  - Warren
- Kentucky·
  - Boone
  - Campbell
  - Kenton
- Indiana:
  - Dearborn

Area of Application: Survey are plus:

- Ohio:
  - Adams
  - Brown
  - Butler
  - Highland
- Indiana:
  - Franklin
  - Ohio
  - Ripley
  - Switzerland
- Kentucky:
  - Bracken
  - Carroll
  - Gallatin
  - Grant
  - Mason
  - Pendleton

CLEVELAND

Survey area

- Ohio:
  - Cuyahoga
  - Geauga
  - Lake
  - Medina

Area of Application. Survey area plus:

- Ohio:
  - Ashland
  - Ashtabula
  - Columbiana
  - Erie
  - Huron
  - Lorain
  - Mahoning
  - Ottawa
  - Portage
  - Sandusky
  - Senaca
  - Stark
  - Summit
  - Trumbull
  - Wayne

COLUMBUS

Survey area

- Ohio:
  - Delaware
  - Fairfield
  - Franklin
  - Licking
  - Madison
  - Pickaway

Area of Application. Survey area plus:

- Ohio:
  - Coshocton
  - Crawford
  - Fayette
  - Guernsey
  - Hancock
  - Hardin
  - Hocking
  - Holmes
  - Knox
  - Marion
  - Morrow
  - Muskingum
  - Perry
  - Richmond
  - Ross
  - Union
  - Wyandot

DAYTON

Survey area

- Ohio:
  - Champaign
  - Clark
  - Greene
  - Miami
  - Montgomery
  - Preble

Area of Application. Survey area plus:

- Ohio:
  - Auglaize
  - Clinton
  - Darke
  - Logan
  - Shelby
- Indiana:
  - Randolph
  - Union
  - Wayne

OKLAHOMA

OKLAHOMA CITY

Survey area

clahoma:
Canadian
Cleveland
McCain
Oklahoma
Pottawatomie

Area of Application. Survey area plus:

lahoma:
lfalfa
toka
eckham
laine
ryan
addo
arter
oal
uster
ewey
llis
arfield
arvin
rady
rant
arper
ughes
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TULSA

Survey area

homa:
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ea of Application. Survey area plus:

oma:
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ctaw
Craig
Delaware
Haskell
Kay
Latimer
LeFlore
McCurtain
McIntosh
Nowata
Okfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington

Arkansas:
- Benton
- Carroll
- Washington

OREGON

PORTLAND

Survey area

Oregon:
- Clackamas
- Marion
- Multnomah
- Polk
- Washington

Washington:
- Clark

Area of Application. Survey area plus:

Oregon:
- Clatsop
- Columbia
- Gilliam
- Hood River
- Sherman
- Tillamook
- Wasco
- Yamhill

Washington:
- Cowlitz
- Klickitat
- Pacific
- Skamania
- Wahkiakum

SOUTHWESTERN OREGON

Survey area

Oregon
- Douglas
- Jackson
- Lane

Area of Application. Survey area plus:

Oregon:
- Benton
- Coos
- Crook
- Curry

Deschutes
Jefferson
Josephine
Klamath
Lake
Lincoln
Linn

PENNSYLVANIA

HARRISBURG

Survey Area

Pennsylvania:
- Adams
- Cumberland
- Dauphin
- Lebanon
- Perry
- York

Area of Application. Survey area plus:

Pennsylvania:
- Berks
- Juniata
- Lancaster
- Lycoming[17]
- Mifflin
- Montour
- Northumberland
- Snyder
- Union

PHILADELPHIA

Survey Area

Pennsylvania:
- Bucks
- Chester
- Delaware
- Montgomery
- Philadelphia

New Jersey:
- Burlington
- Camden
- Gloucester

Area of Application. Survey area plus:

Pennsylvania:
- Lehigh
- Northampton

New Jersey:
- Atlantic
- Cape May
- Cumberland
- Hunterdon
- Mercer
- Ocean
- Warren

PITTSBURGH

Survey Area

Pennsylvania:
- Allegheny:
- Beaver
- Washington
- Westmoreland

Area of Application. Survey area plus:

Pennsylvania:
- Armstrong
- Bedford
- Blair
- Butler
- Cambria
- Cameron
- Centre
- Clarion
- Clearfield
- Clinton
- Crawford
- Elk
- Erie
- Fayette
- Forest
- Fulton
- Greene
- Huntingdon
- Indiana
- Jefferson
- Lawrence
- McKean
- Mercer
- Potter
- Somerset
- Venango
- Warren

Ohio:
- Belmont
- Carroll
- Harrison
- Jefferson
- Tuscarawas

West Virginia:
- Brooke
- Hancock
- Marshall
- Ohio

SCRANTON-WILKES-BARRE

Survey Area

Pennsylvania:
- Lackawanna
- Luzerne
- Monroe

Area of Application. Survey area plus:

Pennsylvania:
- Bradford
- Carbon
- Columbia

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[17] Allenwood Federal Prison Camp portion only.

Lycoming [18]
Pike
Schuylkill
Sullivan
Susquehanna
Tioga
Wayne
Wyoming

PUERTO RICO

Survey Area

Puerto Rico (Municipios):
San Juan
Bayamon
Canovanas
Carolina
Catano
Guaynabo
Juana Diaz
Loiza
Penuelas
Ponce
Toa Baja
Trujillo Alto
Villalba

Area of Application. Puerto Rico

RHODE ISLAND

NARRAGANSETT BAY

Survey Area

Rhode Island:
Bristol
Newport
The following cities and towns in:
Kent County
Anthony
Coventry
East Greenwich
Greene
Warwick
West Warwick
Providence County
Ashton
Burrillville
Central Falls
Cranston
Cumberland
Cumberland Hill
East Providence
Esmond
Forestdale
Greenville
Harrisville
Johnston
Lincoln
Manville
Mapleville
North Providence
North Smithfield
Oakland
Pascoag
Pawtucket
Providence
Saylesville
Slatersville
Smithfield
Valley Falls
Wallum Lake
Woonsocket
Washington County
Davisville
Galilee
La Fayette
Narragansett
North Kingstown
Point Judith
Quonset Point
Saunerstown
Slocum
Massachusetts:
The following cities and towns in:
Bristol County
Attleboro
Fall River
North Attleboro
Rehoboth
Seekonk
Somerset
Swansea
Westport
Norfolk County
Caryville
Plainville
South Bellingham
Worcester County
Blackstone
Millville

Area of Application. Survey area plus:

Rhode Island:
The following cities and towns in:
Kent County
West Greenwich
Providence County
Foster
Glocester
Scituate
Washington County
Charlestown
Exeter
New Shoreham
Richmond
South Kingstown
Massachusetts
The following cities and towns in:
Bristol County
Acushnet
Berkley
Dartmouth
Dighton
Fairhaven
Freetown
Mansfield
New Bedford
Norton
Raynham

---

[18] Excluding Allenwood Federal Prison Camp.

Taunton

SOUTH CAROLINA

CHARLESTON

Survey Area

- South Carolina:
  - Berkeley
  - Charleston
  - Dorchester

Area of Application. Survey area plus:

- South Carolina:
  - Beaufort[19]
  - Colleton
  - Georgetown
  - Williamsburg

COLUMBIA

Survey area

- South Carolina:
  - Darlington
  - Florence
  - Kershaw
  - Lee
  - Lexington
  - Richland
  - Sumter

Area of Application. Survey area plus:

- South Carolina:
  - Abbeville
  - Anderson
  - Calhoun
  - Cherokee
  - Chester
  - Clarendon
  - Fairfield
  - Greenville
  - Greenwood
  - Laurens
  - Newberry
  - Oconee
  - Orangeburg
  - Pickens
  - Saluda
  - Spartanburg
  - Union

SOUTH DAKOTA

EASTERN SOUTH DAKOTA

Survey Area

- South Dakota:
  - Minnehaha

Area of Application. Survey area plus:

- South Dakota
  - Aurora
  - Beadle
  - Bennett
  - Bon Homme
  - Brookings
  - Brown
  - Brule
  - Buffalo
  - Campbell
  - Charles Mix
  - Clark
  - Clay
  - Codington
  - Corson
  - Davison
  - Day
  - Deuel
  - Dewey
  - Douglas
  - Edmunds
  - Faulk
  - Grant
  - Gregory
  - Haakon
  - Hamlin
  - Hand
  - Hanson
  - Hughes
  - Hutchinson
  - Hyde
  - Jackson
  - Jerauld
  - Jones
  - Kingsbury
  - Lake
  - Lincoln
  - Lyman
  - McCook
  - McPherson
  - Marshall
  - Mellette
  - Miner
  - Moody
  - Potter
  - Roberts
  - Sanborn
  - Spink
  - Stanley
  - Sully
  - Todd
  - Tripp
  - Turner
  - Union
  - Walworth
  - Washabaugh
  - Yankton
  - Zieback
- Iowa:
  - Dickinson
  - Emmet
  - Lyon
  - Osceola
- Minnesota:
  - Jackson
  - Lincoln
  - Lyon
  - Murray
  - Nobles
  - Pipestone

---

[19] The portion north of Broad River.

Rock

TENNESSEE

EASTERN TENNESSEE

Survey Area

Tennessee:
  Carter
  Hawkins
  Sullivan
  Unicoi
  Washington
Virginia (City):
  Bristol
Virginia (counties):
  Scott
  Washington

Area of Application. Survey area plus:

Tennessee:
  Cocke
  Greene
  Hancock
  Johnson
Virginia:
  Buchanan
  Grayson
  Lee
  Russell
  Smyth
  Tazewell
  Norton City
North Carolina:
  Alleghany
  Ashe
  Watauga
Kentucky:
  Harlan
  Letcher

MEMPHIS

Survey area

Tennessee:
  Shelby
  Tipton
Arkansas:
  Crittenden
  Mississippi
Mississippi:
  De Soto

Area of Application. Survey area plus:

Tennessee:
  Carroll
  Chester
  Crockett
  Dyer
  Fayette
  Gibson
  Hardeman
  Hardin
  Haywood
  Lake
  Lauderdale
  Madison
  McNairy
  Obion
Arkansas:
  Craighead
  Cross
  Lee
  Poinsett
  St. Francis
Mississippi:
  Benton
  Lafayette[20]
  Marshall
  Pontotoc[20]
  Tate
  Tippah
  Tunica
  Union[20]
Missouri:
  Dunklin
  Pemiscot

NASHVILLE

Survey area

Tennessee:
  Cheatham
  Davidson
  Dickson
  Montgomery
  Robertson
  Rutherford
  Sumner
  Williamson
  Wilson
Kentucky:
  Christian

Area of Application. Survey area plus:

Tennessee:
  Anderson
  Bedford
  Benton
  Bledsoe
  Blount
  Bradley
  Campbell
  Cannon
  Claiborne
  Clay
  Coffee
  Cumberland
  Decatur
  DeKalb
  Fentress
  Grainger
  Grundy
  Hamblen
  Hamilton
  Henderson
  Henry
  Hickman
  Houston

---

[20] Holly Springs National Forest portion only.

- Humphreys
- Jackson
- Jefferson
- Knox
- Lewis
- Loudon
- McMinn
- Macon
- Marion
- Marshall
- Maury
- Meigs
- Monroe
- Morgan
- Overton
- Perry
- Pickett
- Polk
- Putnam
- Rhea
- Roane
- Scott
- Sequatchie
- Sevier
- Smith
- Stewart
- Trousdale
- Union
- Van Buren
- Warren
- Weakley
- White

- Kentucky:
  - Adair
  - Allen
  - Ballard
  - Barren
  - Butler
  - Caldwell
  - Calloway
  - Carlisle
  - Clinton
  - Cumberland
  - Edmondson
  - Fulton
  - Graves
  - Hickman
  - Hopkins
  - Logan
  - Lyon
  - McCracken
  - Marshall
  - Metcalfe
  - Monroe
  - Muhlenberg
  - Russell
  - Simpson
  - Todd
  - Trigg
  - Warren
- Georgia:
  - Catossa
  - Dade
  - Walker

TEXAS

AUSTIN

Survey area

- Texas:
  - Hays
  - Milam
  - Travis
  - Williamson

Area of Application. Survey area plus:

- Texas:
  - Bastrop
  - Blanco
  - Burleson
  - Burnet
  - Caldwell
  - Fayette
  - Lampasas
  - Lee
  - Llano
  - Mason
  - San Saba

Survey area

- Texas:
  - Nueces
  - San Patricio

Area of Application: Survey area plus:

- Texas:
  - Aransas
  - Bee
  - Calhoun
  - Goliad
  - Jim Wells
  - Kleberg
  - Live Oak
  - Refugio
  - Victoria

DALLAS-FORT WORTH

Survey area

- Texas:
  - Collin
  - Dallas
  - Denton
  - Ellis
  - Grayson
  - Hood
  - Johnson
  - Kaufman
  - Parker
  - Rockwall
  - Tarrant
  - Wise

Area of Application. Survey area plus:

- Texas:
  - Cooke
  - Delta
  - Erath
  - Fannin

- Henderson
- Hopkins
- Hunt
- Jack
- Lamar
- Montague
- Navarro
- Palo Pinto
- Rains
- Smith
- Somervell
- Van Zandt
- Wood

Survey area

- Texas:
  - El Paso
- New Mexico:
  - Dona Ana
  - Otero

Area of Application. Survey area plus:

- New Mexico:
  - Chaves
  - Eddy
  - Grant
  - Hidalgo
  - Lincoln[21]
  - Luna
  - Sierra
  - Socorro[21]
- Texas:
  - Culberson
  - Hudspeth

HOUSTON-GALVESTON-TEXAS CITY

Survey area

- Texas:
  - Brazoria
  - Fort Bend
  - Galveston
  - Harris
  - Liberty
  - Montgomery
  - Waller

Area of Application. Survey area plus:

- Texas:
  - Angelina
  - Austin
  - Chambers
  - Colorado
  - Grimes
  - Hardin
  - Houston
  - Jackson
  - Jasper
  - Jefferson
  - Lavaca
  - Madison
  - Matagorda
  - Nacogdoches
  - Newton
  - Orange
  - Polk
  - Sabine
  - San Augustine
  - San Jacinto
  - Shelby
  - Trinity
  - Tyler
  - Walker
  - Washington
  - Wharton

SAN ANTONIO

Survey area

- Texas:
  - Bexar
  - Comal
  - Guadalupe

Area of Application. Survey area plus:

- Texas:
  - Atascosa
  - Bandera
  - Brooks
  - Cameron
  - De Witt
  - Dimmit
  - Duval
  - Edwards
  - Frio
  - Gillespie
  - Gonzales
  - Hidalgo
  - Jim Hogg
  - Karnes
  - Kendall
  - Kenedy
  - Kerr
  - Kinney
  - La Salle
  - McMullen
  - Maverick
  - Medina
  - Real
  - Starr
  - Uvalde
  - Val Verde
  - Webb
  - Willacy
  - Wilson
  - Zapata
  - Zavala

Survey area

- Texas:
  - Bowie
- Arkansas:
  - Little River
  - Miller

Area of Application. Survey area plus:

- Texas:

---

[21] Only White Sands Proving Ground portions.

- Camp
- Cass
- Franklin
- Marion
- Morris
- Red River
- Titus
- Upshur

- Arkansas:
  - Columbia
  - Hempstead
  - Howard
  - Lafayette
  - Nevada
  - Sevier

WACO

Survey area

- Texas:
  - Bell
  - Coryell
  - McLennan

Area of Application. Survey area plus:

- Texas:
  - Anderson
  - Bosque
  - Brazos
  - Falls
  - Freestone
  - Hamilton
  - Hill
  - Leon
  - Limestone
  - Mills
  - Robertson

WESTERN TEXAS

Survey area

- Texas:
  - Callahan
  - Ector
  - Howard
  - Jones
  - Lubbock
  - Midland
  - Nolan
  - Taylor
  - Tom Green

Area of Application. Survey area plus:

- Texas:
  - Andrews
  - Armstrong
  - Bailey
  - Borden
  - Brewster
  - Briscoe
  - Brown
  - Carson
  - Castro
  - Childress
  - Cochran
  - Coke
  - Coleman
  - Collingsworth
  - Comanche
  - Concho
  - Cottle
  - Crane
  - Crockett
  - Crosby
  - Dallam
  - Dawson
  - Deaf Smith
  - Dickens
  - Donley
  - Eastland
  - Fisher
  - Floyd
  - Gaines
  - Garza
  - Glasscock
  - Gray
  - Hale
  - Hall
  - Hansford
  - Hartley
  - Haskell
  - Hemphill
  - Hockley
  - Hutchinson
  - Irion
  - Jeff Davis
  - Kent
  - Kimble
  - King
  - Lamb
  - Lipscomb
  - Loving
  - Lynn
  - McCulloch
  - Martin
  - Menard
  - Mitchell
  - Moore
  - Motley
  - Ochiltree
  - Oldham
  - Parmer
  - Pecos
  - Potter
  - Presidio
  - Randall
  - Reagan
  - Reeves
  - Roberts
  - Runnels
  - Schleicher
  - Scurry
  - Shackelford
  - Sherman
  - Stephens
  - Sterling
  - Stonewall
  - Sutton
  - Swisher
  - Terrell
  - Terry
  - Throckmorton

- Upton
- Ward
- Wheeler
- Winkler
- Yoakum

Oklahoma:
- Beaver
- Cimarron
- Texas

New Mexico:
- Lea

WICHITA FALLS, TEXAS—SOUTHWESTERN OKLAHOMA

Survey area

Texas:
- Archer
- Clay
- Wichita

Oklahoma:
- Comanche
- Cotton
- Stephens
- Tillman

Area of Application. Survey area plus:

Texas:
- Baylor
- Foard
- Hardeman
- Knox
- Wilbarger
- Young

Oklahoma:
- Greer
- Harmon
- Jackson
- Jefferson
- Kiowa

UTAH

Survey area

Utah:
- Box Elder
- Davis
- Salt Lake
- Tooele
- Utah
- Weber

Area of Application. Survey area plus:

Utah:
- Beaver
- Cache
- Carbon
- Daggett
- Duchesne
- Emery
- Garfield
- Grand
- Iron
- Juab
- Millard
- Morgan
- Piute
- Rich
- San Juan[22]
- Sanpete
- Sevier
- Summit
- Uintah
- Wasatch
- Washington
- Wayne

Colorado:
- Moffat

VIRGINIA

NORFOLK-PORTSMOUTH-NEWPORT NEWS-HAMPTON

Survey area

Virginia (cities):
- Chesapeake
- Hampton
- Newport News
- Norfolk
- Poquoson
- Portsmouth
- Suffolk
- Virginia Beach
- Williamsburg

Virginia (counties):
- Gloucester
- James City
- York

North Carolina
- Currituck

Area of Application. Survey area plus:

Virginia (cities):
- Franklin

Virginia (counties):
- Accomack
- Isle of Wight
- Mathews
- Northampton
- Southampton
- Surry

North Carolina:
- Camden
- Chowan
- Gates
- Pasquotank
- Perquimans

Maryland:
- Assateague Island part of Worcester

RICHMOND

Survey area

Virginia (cities):
- Colonial Heights
- Hopewell
- Petersburg

---

[22] Only includes the Canyonlands National Park portion.

Richmond
Virginia (counties):
  Charles City
  Chesterfield
  Dinwiddie
  Goochland
  Hanover
  Henrico
  New Kent
  Powhatan
  Prince George

Area of Application. Survey area plus:

Virginia (cities):
  Charlottesville
  Emporia
  Fredericksburg
Virginia (counties):
  Albemarle
  Amelia
  Brunswick
  Buckingham
  Caroline
  Charlotte
  Cumberland
  Essex
  Fluvanna
  Greensville
  King and Queen
  King William
  Lancaster
  Louisa
  Lunenberg
  Mecklenburg
  Middlesex
  Northumberland
  Nottoway
  Orange
  Prince Edward
  Richmond
  Spotsylvania
  Sussex
  Westmoreland

ROANOKE

Survey area

Virginia (cities):
  Radford
  Roanoke
  Salem
Virginia (counties):
  Botetourt
  Craig
  Montgomery
  Roanoke

Area of Application. Survey area plus:

Virginia (cities):
  Bedford
  Buena Vista
  Clifton Forge
  Covington
  Danville
  Galax
  Lexington
  Lynchburg
  Martinsville
  South Boston
  Staunton
  Waynesboro
Virginia (counties):
  Alleghany
  Amherst
  Appomattox
  Augusta
  Bath
  Bedford
  Bland
  Campbell
  Carroll
  Floyd
  Franklin
  Giles
  Halifax
  Henry
  Highland
  Nelson
  Patrick
  Pittsylvania
  Pulaski
  Rockbridge
  Wythe

WASHINGTON

SEATTLE-EVERETT-TACOMA

Survey area

Washington:
  King
  Kitsap
  Pierce
  Snohomish

Area of Application. Survey area plus:

Washington:
  Chelan [23]
  Clallam
  Grays Harbor
  Island
  Jefferson
  Lewis
  Mason
  San Juan
  Skagit
  Thurston
  Whatcom

SOUTHEASTERN WASHINGTON-EASTERN OREGON

Survey area

Washington:
  Benton
  Franklin
  Walla Walla
  Yakima
Oregon:

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[23] North Cascades Park section only.

Umatilla

Area of Application. Survey area plus:

Oregon:
  Baker
  Grant
  Harney
  Malheur
  Morrow
  Union
  Wallowa
  Wheeler
Washington:
  Kittitas [24]

SPOKANE

Survey area

Washington:
  Spokane

Area of Application. Survey area plus:

Washington:
  Adams
  Asotin
  Chelan [25]
  Columbia
  Douglas
  Ferry
  Garfield
  Grant
  Kittitas [26]
  Lincoln
  Okanogan
  Pend Oreille
  Stevens
  Whitman
Idaho:
  Benewah
  Bonner
  Boundary
  Clearwater
  Idaho
  Kootenai
  Latah
  Lewis
  Nez Perce
  Shoshone

WEST VIRGINIA

Survey area

West Virginia:
  Cabell
  Harrison
  Kanawha
  Marion
  Monogalia
  Putnam
  Wayne
Ohio:
  Lawrence
Kentucky:
  Boyd
  Greenup

Area of Application. Survey area plus:

West Virginia:
  Barbour
  Boone
  Braxton
  Calhoun
  Clay
  Doddridge
  Fayette
  Gilmer
  Grant
  Greenbrier
  Jackson
  Lewis
  Lincoln
  Logan
  McDowell
  Mason
  Mercer
  Mingo
  Monroe
  Nicholas
  Pendleton
  Pleasants
  Pocahontas
  Preston
  Raleigh
  Randolph
  Ritchie
  Roane
  Summers
  Taylor
  Tucker
  Tyler
  Upshur
  Webster
  Wetzel
  Wirt
  Wood
  Wyoming
Ohio:
  Athens
  Gallia
  Jackson
  Meigs
  Monroe
  Morgan
  Noble
  Pike
  Scioto
  Vinton
  Washington
Kentucky:
  Carter
  Elliott
  Floyd
  Johnson
  Lawrence
  Lewis
  Magoffin

---

[24] Only includes the Yakima Firing Range portion.

[25] Excluding North Cascades Park.

[26] Does not include the Yakima Firing Range portion.

  Martin
  Pike
Virginia:
  Dickenson
  Wise

WISCONSIN

MADISON

Survey area

Wisconsin:
  Dane

Area of Application. Survey area plus:

Wisconsin:
  Columbia
  Dodge
  Grant
  Green
  Green Lake
  Iowa
  Jefferson
  Lafayette
  Marquette
  Rock
  Sauk

MILWAUKEE

Survey Area

Wisconsin:
  Milwaukee
  Ozaukee
  Washington
  Waukesha

Area of Application. Survey area plus:

Wisconsin:
  Brown
  Calumet
  Door
  Fond du Lac
  Kenosha
  Kewaunee
  Manitowoc
  Outagamie
  Racine
  Sheboygan
  Walworth
  Winnebago

SOUTHWESTERN WISCONSIN

Survey area

Wisconsin:
  Chippewa
  Eau Claire
  La Crosse
  Monroe
  Trempealeau

Area of Application. Survey area plus:

Wisconsin:
  Adams
  Barron
  Buffalo
  Clark
  Crawford
  Dunn
  Florence
  Forest
  Jackson
  Juneau
  Langlade
  Lincoln
  Marathon
  Marinette
  Menominee
  Oconto
  Oneida
  Pepin
  Portage
  Price
  Richland
  Rusk
  Shawano
  Taylor
  Vernon
  Vilas
  Waupaca
  Waushara
  Wood
Minnesota:
  Fillmore
  Houston
  Wabasha
  Winona

WYOMING

Survey area

Wyoming:
  Albany
  Laramie
  Natrona
South Dakota:
  Pennington

Area of Application. Survey area plus:

Wyoming:
  Campbell
  Carbon
  Converse
  Crook
  Fremont
  Goshen
  Hot Spring
  Johnson
  Lincoln
  Niobrara
  Platte
  Sheridan
  Sublette
  Sweetwater
  Teton
  Uinta
  Washakie
  Weston
Nebraska:
  Banner
  Box Butte

Cheyenne
Dawes
Deuel
Garden
Kimball
Morrill
Scotts Bluff
Sheridan
Sioux
South Dakota:
Butte
Custer
Fall River
Harding
Lawrence
Meade
Perkins
Shannon

[55 FR 46151, Nov. 1, 1990]

APPENDIX D TO SUBPART B OF PART 532—NONAPPROPRIATED FUND WAGE AND SURVEY AREAS

This appendix lists the wage area definitions for NAF employees. With a few exceptions, each area is defined in terms of county units or independent cities. Each wage area definition consists of:

(1) *Wage area title.* Wage areas usually carry the title of the county or counties surveyed.

(2) *Survey area definition.* Lists each county or independent city in the survey area.

(3) *Area of application definition.* Lists each county or independent city which, in addition to the survey area, is in the area of application.

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

ALABAMA

CALHOUN

Survey area

Alabama:
Calhoun

Area of Application. Survey area plus:

Alabama:
Jefferson

MADISON

Survey area

Alabama:
Madison

Area of Application. Survey area plus:

Tennessee:
Coffee
Davidson
Hamilton
Rutherford

MONTGOMERY

Survey area

Alabama:
Montgomery

Area of Application Survey area plus:

Alabama
Dale
Dallas
Macon

ALASKA

ANCHORAGE

Survey area

Alaska: (Census divisions)
Anchorage

Area of Application. Survey area plus:

Alaska: (Census divisions)
Aleutian Islands
Barrow-North Slope
Bethel
Bristol Bay
Fairbanks
Juneau
Kenai-Cook Inlet
Ketchikan
Kobuk
Kodiak
Kuskokwim
Nome
Outer Ketchikan
Sitka
Southeast Fairbanks
Upper Yukon
Wade Hampton
Yukon-Koyukuk

ARIZONA

MARICOPA

Survey area

Arizona:
Maricopa

Area of Application. Survey area plus:

Arizona:
Coconino
Yavapai

PIMA

Survey area

Arizona:
Pima

Area of Application. Survey area plus:

Arizona:
Cochise

YUMA

Survey area

Arizona:

Area of Application. Survey area plus:

ARKANSAS

PULASKI

Survey area

Arkansas:
  Pulaski

Area of Application. Survey area plus:

Jefferson
Sebastian
Washington

CALIFORNIA

ALAMEDA-CONTRA COSTA

Survey area

California
  Alameda
  Contra Costa

Area of Application. Survey area plus:

IMPERIAL

Survey area

California:
Imperial

Area of Application. Survey area plus:

KERN

Survey area

California:
  Kern

Area of Application. Survey area plus:

California:
  Kings

LOS ANGELES

Survey area

California:
  Los Angeles

Area of Application. Survey area plus:

MARIN-SONOMA

Survey area

California:
  Marin
  Sonoma

Area of Application. Survey area plus:

California:
Del Norte
Humboldt
Mendocino

MERCED

Survey area

California:
  Merced

Area of Application. Survey area plus:

California:
  Fresno

MONTEREY

Survey area

California:
  Monterey

Area of Application. Survey area plus:

ORANGE

Survey area

California:
Orange

Area of Application. Survey area plus:

RIVERSIDE

Survey area

California:
  Riverside

Area of Application. Survey area plus:

SACRAMENTO

Survey area

California:
  Sacramento

Area of Application. Survey area plus:

California:
  Yuba
Oregon:
  Jackson
  Klamath

SAN BERNARDINO

Survey area

California:
  San Bernardino
  San Bernardino

Area of Application. Survey area plus:

SAN DIEGO

Survey area

California:
  San Diego

Area of Application. Survey area plus:

SAN FRANCISCO

Survey area

California:
San Francisco

Area of Application. Survey area plus:

SAN JOAQUIN

Survey area

alifornia:
San Joaquin

Area of Application. Survey area plus:

SANTA BARBARA

Survey area

alifornia:
Santa Barbara

Area of Application. Survey area plus:

alifornia:
San Luis Obispo

SANTA CLARA

Survey area

alifornia:
Santa Clara

Area of Application. Survey area plus:

alifornia:
San Mateo

SOLANO

Survey area

alifornia:
Solano

Area of Application. Survey area plus:

VENTURA

Survey area

lifornia:
Ventura

Area of Application. Survey area plus:

COLORADO

ADAMS-DENVER

Survey area

lorado:
dams
enver

Area of Application. Survey area plus:

orado:
rapahoe
esa

EL PASO

Survey area

Colorado:
El Paso

Area of Application. Survey area plus:

Colorado:
Bent
Pueblo

CONNECTICUT

NEW LONDON

Survey area

Connecticut:
New London

Area of Application. Survey area plus:

Connecticut:
New Haven

DELAWARE

KENT

Survey area

Delaware:
Kent

Area of Application. Survey area plus:

Delaware:
Sussex
Maryland:
Kent

DISTRICT OF COLUMBIA

Survey area

District of Columbia:
Washington, D.C.

Area of Application. Survey area plus:

FLORIDA

BAY

Survey area

Florida
Bay

Area of Application. Survey area.

BREVARD

Survey area

Florida:
Brevard

Area of Application. Survey area plus:

DADE

Survey area

Florida:
  Dade

Area of Application. Survey area plus:

Florida:
  Palm Beach

DUVAL

Survey area

Florida:
  Duval

Area of Application. Survey area plus:

Florida:
  Alachua
  Clay
  Columbia
Georgia:
  Camden

ESCAMBIA

Survey area

Florida:
  Escambia

Area of Application. Survey area plus:

Florida
  Santa Rosa

HILLSBOROUGH

Survey area

Florida:
  Hillborough

Area of Application. Survey area plus:

Florida:
  Pinellas
  Polk

MONROE

Survey area

Florida:
  Monroe

Area of Application. Survey area plus:

OKALOOSA

Survey area

Florida:
  Okaloosa

Area of Application. Survey area plus:

Walton

ORANGE

Survey area

Florida:

Area of Application. Survey area plus:

GEORGIA

CHATHAM

Survey area

Georgia:
  Chatham

Area of Application. Survey area plus:

Georgia:
  Glynn
  Liberty
South Carolina:
  Beaufort

CLAYTON-COBB-FULTON

Survey area

Georgia:
  Clayton
  Cobb
  Fulton

Area of Application. Survey area plus:

Georgia:
  Bartow
  Clarke
  De Kalb

COLUMBUS

Survey area

Georgia:
  Columbus

Area of application: Survey area plus:

Georgia:
  Chattahoochee

DOUGHERTY

Survey area

Georgia:
  Doughtery

Area of application. Survey area.

HOUSTON

Survey area

Georgia:
  Houston

Area of application. Survey area plus:

Georgia:
  Laurens

LOWNDES

Survey area

Georgia:
  Lowndes

Area of application. Survey area.

RICHMOND

Survey area

Georgia:
  Richmond

Area of application: Survey area plus:

South Carolina:
  Aiken

GUAM

Survey area

Guam

Area of application: Survey area.

HAWAII

HONOLULU

Survey area

Hawaii:
  Honolulu

Area of application. Survey area plus:

Hawaii (counties):
  Hawaii
  Kauai
  Maui
Pacific Islands
Midway Island
Johnston Island
American Samoa

IDAHO

ADA-ELMORE

Survey area

Idaho:
  Ada
  Elmore

Area of application. Survey area.

ILLINOIS

CHAMPAIGN

Survey area

Illinois:
  Champaign

Area of application. Survey area plus:

Illinois:
  Ford
  Vermillion

COOK

Survey area

Illinois:
  Cook

Area of application. Survey area.

LAKE

Survey area

Illinois:
  Lake

Area of application. Survey area plus:

Wisconsin:
  Dane
  Milwaukee

ROCK ISLAND

Survey area

Illinois:
  Rock Island

Area of application. Survey area plus:

Illinois:
  Carroll
Iowa:
  Johnson

ST. CLAIR

Survey area

Illinois:
  St. Clair

Area of application. Survey area plus:

Illinois:
  Madison
  Williamson
Missouri: (cities)
  St. Louis
Missouri: (counties)
  Jefferson
  Pulaski

INDIANA

MARION

Survey area

Indiana:
  Marion

Area of application: Survey area plus:

  Allen
  Grant
  Martin
  Miami

KANSAS

SEDGWICK

Survey area

Kansas:
  Sedgwick

Area of application. Survey area plus:

Kansas:
  Geary
  Saline

LEAVENWORTH/JACKSON-JOHNSON

Survey area

Kansas:
  Leavenworth
Missouri:
  Jackson
  Johnson

Area of application: Survey area plus:

Kansas:
  Shawnee
Missouri:
  Boone
  Camden
  Cass

KENTUCKY

CHRISTIAN-MONTGOMERY

Survey area

Kentucky:
  Christian
Tennessee:
  Montgomery

Area of application. Survey area.

CLARK-HARDIN-JEFFERSON

Survey area

Indiana:
  Clark
Kentucky:
  Hardin
  Jefferson

Area of application. Survey area plus:

Indiana:
  Jefferson
Kentucky:
  Fayette
  Madison
  Warren

LOUISIANA

BOSSIER-CADDO

Survey area

Louisiana:
  Bossier
  Caddo

Area of application. Survey area plus:

Texas:
  Bowie

ORLEANS

Survey area

Louisiana:
  Orleans

Area of application. Survey area plus:

Plaquemines

RAPIDES

Survey area

Louisiana:
  Rapides

Area of application. Survey area plus:

Louisiana:
  Vernon

MAINE

AROOSTOOK

Survey area

Maine:
  Aroostook

Area of application. Survey area plus:

Maine:
  Washington County

CUMBERLAND

Survey area

Maine:
  Cumberland

Area of application. Survey area plus:

Maine:
  Hancock
  Kennebec
  Knoc
  Penobscot
  Sagadahoc

MARYLAND

ANNE ARUNDEL

Survey area

Maryland:
  Anne Arundel

Area of application. Survey area plus:

Maryland: (cities)
  Baltimore
Maryland: (counties)
  Baltimore

CHARLES-ST. MARYS

Survey area

Maryland:
 Charles
 St. Marys

Area of application. Survey are plus:

Maryland:
 Calvert
Virginia:
 King George

HARFORD

Survey area

Maryland:
 Harford

Area of application. Survey area plus:

Maryland:
 Cecil

MONTGOMERY-PRINCE GEORGES

Survey area

Maryland:
 Montgomery
 Prince Georges

Area of application. Survey area plus:

WASHINGTON

Survey area

Maryland:
 Washington

Area of application. Survey area plus:

Maryland:
 Frederick
West Virginia:
 Berkeley

MASSACHUSETTS

HAMPDEN

Survey area

Massachusetts:
 Hampden

Area of application. Survey area plus:

Connecticut:
 Hartford
Massachusetts:
 Hampshire

MIDDLESEX

Survey area

Massachusetts:
 Middlesex

Area of application. Survey area plus:

New Hampshire:
 Hillsborough

NORFOLK

Survey area

Massachusetts:
 Norfolk

Area of application. Survey area plus:

Massachusetts:
 Barnstable
 Plymouth
 Nantucket
 Suffolk

MICHIGAN

MACOMB

Survey area

Michigan:
 Macomb

Area of application. Survey area plus.

Michigan:
 Alpena
 Calhoun
 Crawford
 Grand Traverse
 Huron
 Iosco
 Leelanau
 Saginaw
 Washtenaw
 Wayne
Ohio:
 Ottawa

MARQUETTE

Survey area

Michigan:
 Marquette

Area of application. Survey area plus:

Michigan:
 Chippewa
 Dickinson
 Houghton
Wisconsin:
 Langlade

MINNESOTA

HENNEPIN

Survey area

Minnesota:
 Hennepin

Area of application. Survey area plus:

Minnesota:
 Morrison
 Murray
 Ramsey

  - Stearns
  - St. Louis
- Wisconsin:
  - Juneau
  - Monroe
  - Polk

MISSISSIPPI

HARRISON

Survey area

- Mississippi:
  - Harrison

Area of application. Survey area plus:

- Alabama:
  - Mobile
- Mississippi
  - Forest
  - Jackson

LAUDERDALE

Survey area

- Mississippi:
  - Lauderdale

Area of application. Survey area plus:

- Mississippi:
  - Hinds
  - Rankin
  - Warren

LOWNDES

Survey area

- Mississippi:
  - Lowndes

Area of application area plus:

- Alabama:
  - Tuscaloosa

MONTANA

CASCADE

Survey area

- Montana:
  - Cascade

Area of application. Survey area plus:

- Montana:
  - Fergus
  - Flathead
  - Hill
  - Lewis and Clark
  - Valley
  - Yellowstone

NEBRASKA

DOUGLAS-SARPY

Survey area

- Nebraska:
  - Douglas
  - Sarpy

Area of application. Survey area plus:

- Iowa:
  - Marion
  - Polk
  - Woodbury
- Nebraska:
  - Hall
  - Lancaster
  - Saunders
- South Dakota:
  - Minnehaha

NEVADA

CHURCHILL-WASHOE

Survey area

- Nevada:
  - Churchill
  - Washoe

Area of Application. Survey area plus:

- California:
  - Lassen
  - Mono
- Nevada:
  - Mineral

CLARK

Survey area

- Nevada:
  - Clark

Area of Application. Survey area.

NEW HAMPSHIRE

ROCKINGHAM

Survey area

- New Hampshire:
  - Rockingham

Area of Application. Survey area plus:

- Maine:
  - York
- Vermont:
  - Windsor

NEW JERSEY

BURLINGTON

Survey area

- New Jersey:
  - Burlington

Area of Application. Survey area plus:

- New Jersey:
  - Atlantic

MONMOUTH

Survey area

- New Jersey:
  - Monmouth

Area of application. Survey area.

MORRIS

Survey area

- New Jersey:
  - Morris

Area of Application. Survey area plus:

- New Jersey:
  - Somerset
- Pennsylvania:
  - Monroe

OCEAN

Survey area

- New Jersey:
  - Ocean

Area of Application. Survey area.

NEW MEXICO

BERNALILLO

Survey area

- New Mexico:
  - Bernalillo

Area of Application. Survey area plus:

- New Mexico:
  - McKinley

DONA ANA

Survey area

- New Mexico:
  - Dona Ana

Area of Application. Survey area plus:

- New Mexico:
  - Chaves
  - Otero

NEW YORK

CLINTON

Survey area

- New York:
  - Clinton

Area of Application. Survey area plus:

- Vermont:
  - Chittenden
  - Franklin

KINGS-QUEEN

Survey area

- New York:
  - Kings
  - Queens

Area of Application. Survey area plus:

- New Jersey:
  - Essex
  - Hudson
- New York:
  - Bronx
  - Nassau
  - New York
  - Richmond
  - Suffolk

NIAGARA

Survey area

- New York:
  - Niagara

Area of Application. Survey area plus:

- New York:
  - Erie
  - Genesee
- Pennsylvania:
  - Erie

ONEIDA

Survey area

- New York:
  - Oneida

Area of Application. Survey area plus:

- New York:
  - Albany
  - Jefferson
  - Onondago
  - Ontario
  - Saratoga
  - Schenectady
  - Seneca
  - Steuben

ORANGE

Survey area

- New York:
  - Orange

Area of Application. Survey area plus:

- New York:
  - Dutchess
  - Westchester

NORTH CAROLINA

CRAVEN

Survey area

- North Carolina:

Craven

Area of Application. Survey area plus:

- North Carolina:
  - Carteret
  - Dare
  - Onslow

CUMBERLAND

Survey area

- North Carolina:
  - Cumberland

Area of Application. Survey area plus:

- North Carolina:
  - Durham
  - Rowan
  - Onslow

Survey area

- North Carolina:
  - Onslow

Area of Application. Survey area.

WAYNE

Survey area

- North Carolina:
  - Wayne

Area of Application. Survey area plus:

- North Carolina:
  - Halifax

NORTH DAKOTA

GRAND FORKS

Survey area

- North Dakota:
  - Grand Forks

Area of Application. Survey area plus:

- North Dakota:
  - Cass
  - Cavalier
  - Steele

WARD

Survey area

- North Dakota:
  - Ward

Area of Application. Survey area plus:

- North Dakota:
  - Divide

OHIO

FRANKLIN

Survey area

- Ohio:
  - Franklin

Area of Application. Survey area pl

- Ohio:
  - Licking
  - Ross
- West Virginia:
  - Cabell
  - Raleigh

GREENE-MONTGOMERY

Survey area

- Ohio:
  - Greene
  - Montgomery

Area of Application. Survey area plu

- Ohio:
  - Clinton
  - Hamilton

OKLAHOMA

COMANCHE

Survey area

- Oklahoma:
  - Comanche

Area of Application. Survey area plus

- Oklahoma:
  - Cotton
  - Jackson

OKLAHOMA

Survey area

- Oklahoma:
  - Oklahoma

Area of Application. Survey area plus

- Oklahoma:
  - Garfield
  - Muskogee
  - Pittsburg

PENNSYLVANIA

ALLEGHENY

Survey area

- Pennsylvania:
  - Allegheny

Area of Application. Survey area plus:

- Ohio:
  - Cuyahoga
  - Trumbull
- Pennsylvania:
  - Butler
  - Westmoreland
- West Virginia:
  - Harrison

MONTGOMERY

Survey area

Pennsylvania:
  Montgomery

Area of Application. Survey area plus:

Pennsylvania:
  Bucks
  Luzerne

CUMBERLAND

Survey area

Pennsylvania:
  Cumberland

Area of Application. Survey area.

FRANKLIN

Survey area

Pennsylvania:
  Franklin

Area of Application. Survey area plus:

Pennsylvania:
  Blair

LEBANON

Survey area

Pennsylvania:
  Lebanon

Area of Application. Survey area plus:

Pennsylvania:
  Columbia

PHILADELPHIA

Survey area

Pennsylvania:
  Philadelphia

Area of Application. Survey area plus:

Delaware:
  New Castle
New Jersey:
  Camden
  Cape May
  Gloucester
  Salem
Pennsylvania:
  Chester

YORK

Survey area

Pennsylvania:
  York

Area of Application. Survey area.

PUERTO RICO

GUAYNABO-SAN JUAN

Survey area

Puerto Rico (municipalities)
  Guaynabo
  San Juan

Area of Application. Survey area plus:

Puerto Rico: (municipalities)
  Aguadilla
  Isabela
  Ponce
  Toa Baja
  Ceiba
  Vieques
U.S. Virgin Islands
  St. Croix
  St. Thomas

RHODE ISLAND

NEWPORT

Survey area

Rhode Island:
  Newport

Area of Application. Survey area.

Rhode Island:
  Providence
  Washington

SOUTH CAROLINA

CHARLESTON

Survey area

South Carolina:
  Charleston

Area of Application. Survey area plus:

South Carolina:
  Berkeley

HORRY

Survey area

South Carolina:
  Horry

Area of Application. Survey area plus:

North Carolina:
  New Hanover

RICHLAND

Survey area

South Carolina:
  Richland

Area of Application. Survey area plus:

- North Carolina:
  - Buncombe
- South Carolina:
  - Sumpter
- Tennessee:
  - Washington

SOUTH DAKOTA

PENNINGTON

Survey area

- South Dakota:
  - Pennington

Area of Application. Survey area plus:

- Montana:
  - Custer
- South Dakota:
  - Fall River
  - Meade
- Wyoming:
  - Sheridan

TENNESSEE

SHELBY

Survey area

- Tennessee:
  - Shelby

Area of Application. Survey area plus:

- Arkansas:
  - Mississippi
- Missouri:
  - Butler

TEXAS

BELL

Survey area

- Texas:
  - Bell

Area of Application. Survey area plus:

- Texas:
  - Coryell
  - Falls

BEXAR

Survey area

- Texas:
  - Bexar

Area of Application. Survey area plus:

- Texas:
  - Comal
  - Kerr
  - Val Verde

DALLAS

Survey area

- Texas:
  - Dallas

Area of Application. Survey area pl

- Texas:
  - Fannin
  - Galveston
  - Harris

EL PASO

Survey area

- Texas:
  - El Paso

Area of Application. Survey area.

LUBBOCK

Survey area

- Texas:
  - Lubbock

Area of Application. Survey area plu

- New Mexico
  - Curry
- Texas:
  - Potter
  - McLennan

Survey area

- Texas:
  - McLennan

Area of Application. Survey area.

NUECES

Survey area

- Texas:
  - Nueces

Area of Application. Survey area plus

- Texas:
  - Bee
  - Calhoun
  - Kleberg
  - Webb

TARRANT

Survey area

- Texas:
  - Tarrant

Area of Application. Survey area plus:

- Texas:
  - Cooke
  - Palo Pinto

TAYLOR

Survey area

Texas:
  Taylor

Area of Application. Survey area.

TOM GREEN

Survey area

Texas:
  Tom Green

Area of Application. Survey area plus:

Texas:
  Howard

TRAVIS

Survey area

Texas:
  Travis

Area of Application. Survey area plus:

Texas:
  Burnet

WICHITA

Survey area

Texas:
  Wichita

Area of Application. Survey area.

UTAH

DAVIS-SALT LAKE-WEBER

Survey area

Utah:
  Davis
  Salt Lake
  Weber

Area of Application. Survey area plus:

Utah:
  Box Elder
  Tooele
  Uintah

VIRGINIA

ALEXANDRIA-ARLINGTON-FAIRFAX

Survey area

Virginia: (cities)
  Alexandria
Virginia: (counties)
  Arlington
  Fairfax

Area of Application. Survey area.

CHESTERFIELD-RICHMOND

Survey area

Virginia: (cities)
  Richmond
Virginia: (counties)—
  Chesterfield

Area of Application. Survey area plus:

Virginia: (cities)
  Bedford
  Charlottesville
  Salem
Virginia: (counties)
  Caroline
  Nottoway
  Prince George
West Virginia:
  Pendleton

HAMPTON-NEWPORT NEWS

Survey area

Virginia: (cities)
  Hampton
  Newport News

Area of Application. Survey area plus:

Virginia: (cities)
  Williamsburg
Virginia: (counties)
  York

NORFOLK-PORTSMOUTH-VIRGINIA BEACH

Survey area

Virginia: (cities)
  Norfolk
  Portsmouth
  Virginia Beach

Area of Application. Survey area plus:

North Carolina:
  Pasquotank
Virginia: (cities)
  Chesapeake
  Suffolk
Virginia: (counties)
  Accomack
  Northampton

PRINCE WILLIAM

Survey area

Virginia:
  Prince William

Area of Application. Survey area plus:

Virginia:
  Fauquier

WASHINGTON

KING

Survey area

Washington:
  King

Area of Application. Survey area plus:

Washington:
  Island
  Snohomish
  Whatcom
  Yakima

KITSAP

Survey area

Washington:
  Kitsap

Area of Application. Survey area plus:

Clallam

PIERCE

Survey area

Washington:
  Pierce

Area of Application. Survey area plus:

Oregon:
  Clatsop
  Coos
  Douglas
  Multnomah
  Tillamook
Washington:
  Clark
  Grays Harbor

SPOKANE

Survey area

Washington:
  Spokane

Area of Application. Survey area plus:

Oregon:
  Umatilla
Washington:
  Adams
  Walla Walla

WYOMING

LARAMIE

Survey area

Wyoming:
  Laramie

Area of Application. Survey area.

[55 FR 46172, Nov. 1, 1990; 55 FR 52267, Dec. 21, 1990]

Subpart C—Determining Rates f
Principal Types of Positions

§ 532.301 Definitions.

For purposes of this subpart:

"Nearest similar wage area" me
the nearest wage area which is n
similar to the local wage area in te
of private employment, populat
relative numbers of private emplo
in major industry categories,
kinds and sizes of industry establi
ments and in which adequate priv
establishments exist in the sur
area whose activities are similar
those in the dominant industry.

"Principal types of appropriated
nonappropriated fund positio
means those groups of occupatio
which require work of a speciali
nature and which are peculiar to
specific Government industry which
the dominant industry among t
total wage employment in the wa
area.

"Specialized private industry" mea
private industry establishments
those industry groups, comparable
the specialized Government industri
listed in § 532.303 of this sectio
which must be included in a wa
survey in order to obtain data comp
rable to a dominant industry.

§ 532.303 Specialized industry.

(a)(1) Under the appropriated fu
wage system, a "specialized industr
is a Federal activity engaged in t
production or repair of aircraft, a
munition, artillery and combat veh
cles, communication equipment, ele
tronic equipment, guided missile
heavy duty equipment, shipbuildin
sighting and fire control equipment,
small arms.

(2) Under the nonappropriated fun
wage system a "specialized industry
includes only nonappropriated fun
operated eating and drinking place
Additional industries may be consid
ered as specialized industries upon ap
proval of the Office of Personnel Ma
agement.

§ 532.305 Dominant industry.

(a)(1) A specialized industry is
"dominant industry" if the number o
wage employees in the wage area wh

are subject to the wage schedule for which the survey is made and employed in occupations which comprise the principal types of appropriated or nonappropriated fund positions in the specialized industry comprise:

(i) For appropriated fund activities,

(A) At least 25 percent of the total wage employment or

(B) 1,000 or more employees in a wage area having more than 4,000 wage employees; and

(ii) For nonappropriated fund activities

(A) At least 25 percent of the total wage employment or

(B) 100 or more wage employees in a wage area having 400 or more wage employees.

(2) If two or more specialized industries in a wage area qualify as dominant industries, the two specialized industries having the largest number of wage employees shall be the dominant industries for purposes of applying the requirements of this subpart.

§ 532.307 Determinating whether a dominant industry exists in a wage area.

(a) The chairperson of the local wage survey committee shall, before a full-scale wage survey is scheduled to begin, notify all appropriated or nonappropriated fund activities having employees subject to the wage schedules for which the survey is conducted so that organizations and individuals may submit written recommendations and supporting evidence to the local wage survey committee concerning principal types of appropriated or nonappropriated fund positions in the area. Each appropriated or nonappropriated fund activity shall publicize the opportunity to make such recommendations.

(b)(1) Before conducting a full-scale wage survey an occupational inventory of employees subject to the wage schedules for which the survey is conducted shall be obtained from each appropriated or nonappropriated fund activity in the area having such employees.

(2) After reviewing the occupational inventory and considering the recommendations received pursuant to paragraph (a) of this section, the local wage survey committee shall formulate its recommendations and prepare a written report concerning the existence of specialized industries within the wage area.

(3) The report of the recommendations, the occupational inventory, and the recommendations and supporting evidence received pursuant to paragraph (a) of this section shall be forwarded to the lead agency.

(c) The lead agency shall refer the occupational inventory and the reports received pursuant to paragraph (b) of this section to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendation of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(d) The lead agency shall determine, in writing, after taking into consideration the reports and recommendations received under paragraphs (b) and (c) of this section, and prior to ordering a full-scale wage survey to begin, whether the principal types of appropriated or nonappropriated fund positions in a local wage area comprise a dominant industry. The determination shall remain in effect until the next full-scale wage survey in the area.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46179, Nov. 1, 1990]

§ 532.309 Determining adequacy of specialized private industry.

(a) Specialized private industry comparable to an appropriated fund dominant industry is adequate when:

(1) The survey area is one of the 25 largest Standard Metropolitan Statistical Areas, or the total number of employees of private industry establishments in the specialized private industry located in the survey area is at least equal to the total number of appropriated fund wage employees in occupations which comprise the principal types of appropriated positions in the dominant industry who are subject to the wage schedules for which the survey is made; or

(2) For any dominant industry except "ammunition," the job matches obtained from the specialized private industry include one regular survey job in the WG-01 through 04 range, cne regular survey job in the WG-05 through 08 range, one regular survey job in the WG-09 and above range, and one special survey job in the WG-09 and above range all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(3) For the dominant industry "ammunition," the job matches obtained from the specialized survey industries include one regular survey job in the WG-01 through 04 range, one special survey job in the WG-05 through 08 range, and one regular survey job in the WG-09 through 15 range, all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(b) Specialized private industry comparable to a nonappropriated fund dominant industry is adequate when:

(1) The total number of employees of private industry establishments similar to the dominant industry located in the survey are at least equal to the number of nonappropriated fund wage employees in positions which comprise the principal types of nonappropriated fund positions in the dominant industry who are subject to the wage schedules for which the survey is made; and

(2) The job matches obtained from all industries surveyed for regular survey jobs related to the dominant industry include one regular survey job in the NA-01 through 04 range providing at least 10 samples; and one regular survey job in the NA-05 through 15 range and one other regular survey job, each providing at least five samples.

§ 532.311 Survey of specialized private industry related to a dominant industry.

If it is determined that there are one or more dominant industries within a wage area, the lead agency shall insure that the survey includes the industries and survey jobs related to the dominant industries. When the related industry within the local wage survey area fails to meet the criteria in § 532.309 of this subpart, the lead agency shall obtain data related to the dominant industry from the survey area of the wage area which is determined to be the nearest similar area which will provide adequate data under the criteria in § 532.309 of this subpart.

[46 FR 21344, Apr. 10, 1981, as amended at 55 FR 46179, Nov. 1, 1990]

§ 532.313 Private sector industries.

(a) For appropriated fund surveys, a lead agency shall use the following private sector industries in making its determinations for each specialized industry:

Aircraft

SIC 3721 Aircraft
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3764 Guided missile and space vehicle propulsion units and propulsion unit parts
SIC 3769 Guided missile and space vehicle parts and auxiliary equipment
SIC 4512 Air transportation, scheduled
SIC 4513 Air courier services
SIC 4522 Air transportaiton, nonscheduled carriers
SIC 4581 Airports, flying fields, and airport terminal services

Ammunition

SIC 2892 Explosives
SIC 3482 Small arms ammunition
SIC 3483 Ammunition, except for small arms

Artillery and combat vehicles

SIC 3273 Ready mixed concrete
SIC 3489 Ordnance and accessories
SIC 351 Engines and turbines
SIC 3523 Farm machinery and equipment
SIC 3524 Lawn and garden tractors and home lawn and garden equipment
SIC 3531 Construction machinery and equipment
SIC 3536 Hoists, industrial cranes, and monorail systems
SIC 3537 Industrial trucks, tractors, trailers, and stackers
SIC 3711 Motor vehicles and passenger car bodies
SIC 3713 Truck and bus bodies
SIC 3714 Motor vehicle parts an accessories

SIC 3715 Truck trailers
SIC 3795 Tanks and tank components
SIC 4041 Railway express service
SIC 421 Trucking, local and long distance
SIC 4812 Radiotelephone communications
SIC 4813 Telephone communciation, except radiotelphone
SIC 4911 Electric services
SIC 492 Gas production and distribution
SIC 493 Combination electric and other utility services
SIC 501 Motor vehicles and motor vehicle parts and supplies, except SIC 5015—motor vehicle parts, used
SIC 5082 Construction and mining machinery and equipment
SIC 5083 Farm and garden machinery and equipment

Communications

SIC 3612 Power, distribution, and specialty transformers
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 3825 Instruments for measuring and testing of electricity and electrical signals
SIC 4812 Radiotelephone communciations
SIC 4813 Telephone communication, except radiotelphone
SIC 4832 Radio broadcasting
SIC 4833 Television broadcasting
SIC 4841 Cable and other pay TV services
SIC 4899 Communciation services, NEC

Electronics

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3672 Printed circuit boards
SIC 3674 Semi-conductors and related devices
SIC 3675 Electronic capacitors
SIC 3676 Resistor, for electronic applications
SIC 3677 Electronic coils, transformers, and other inductors
SIC 3678 Connecters, for electronic applications
SIC 3679 Electronic components, not elsewhere classified
SIC 3695 Recording media
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 5044 Office equipment
SIC 5045 Computer and computer peripheral equipment and software

Guided missiles

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3761 Guided missiles and space vehicles
SIC 3764 Guided missile and space vehicle propulsion units and propulsion unit parts
SIC 3769 Guided missile and space vehicle parts and auxiliary equipment
SIC 3812 Search, navigation, aeronautical, and nautical systems, instruments, and equipment
SIC 8711 Engineering services
SIC 8712 Architectural services
SIC 8713 Surveying services

Heavy duty equipment

SIC 3531 Construction machinery and equipment
SIC 3536 Hoists, industrial cranes, and monorail systems
SIC 3537 Industrial trucks, tractors, trailers, and stackers
SIC 5082 Construction and mining machinery and equipment

Shipbuilding

SIC 3731 Shipbuilding and repairing

Sighting and fire control equipment

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 3827 Optical instruments and lenses

Small arms

SIC 3484 Small arms.

(b) Industries in SICs 3273, 4041, 421, 4812, 4813, 4911, 492 and 493, listed in paragraph (a) of this section are limited in special job coverage to automotive mechanic, diesel engine mechanic, and heavy mobile equipment mechanic.

(c) For nonappropriated fund surveys, the lead agency shall use SIC 581 (eating and drinking places industry) in making its determination for a specialized industry.

[55 FR 46179, Nov. 1, 1990; 55 FR 52267, Dec. 21, 1990]

§ 532.315 Additional survey jobs.

(a) For appropriated fund surveys, when the lead agency adds to the industries to be surveyed, it shall add to the required survey jobs the specialized survey jobs listed below opposite the industry added:

Specialized industry	Specialized survey jobs	Grade
Aircraft	Electronics Mechanic	WG-11
	Aircraft Structures Assembler B	WG-7
	Aircraft Structures Assembler A	WG-9
	Aircraft Mechanic	WG-10
	Aircraft Mechanic includes	
	Aircraft Electrician	WG-10
	Aircraft Welder	WG-10
	Aircraft Sheetmetal Worker	WG-10
	Hydromechanical Fuel Control Repairer	WG-10
	Aircraft Engine Mechanic	WG-10
	Aircraft Jet Engine Mechanic	WG-10
	Flight Line Mechanic	WG-10
	Aircraft Attendant (ground services).	WG-7
Ammunition	Munitions Handler	WG-4
	Munitions Operator	WG-4
	Munitions Operator	WG-6
	Munitions Operator	WG-8
	Munitions Operator	WG-9
	Explosives Operator	WG-9
Artillery and combat vehicles.	Automotive Mechanic (limited to data obtained in special industries).	WG-10
	Heavy Mobile Equipment Mechanic.	WG-10
	Artillery Repairer	WG-9
	Combat Vehicle Mechanic	WG-8
	Combat Vehicle Mechanic (Engine).	WG-10
	Combat Vehicle Mechanic	WG-11
	Diesel Engine Mechanic (limited to data obtained in special industries.	WG-10
Communications.	Telephone Installer-Repairer	WG-9
	Central Office Repairer	WG-11
	Electronic Test Equipment Repairer.	WG-11
	Television Station Mechanic	WG-11
Electronics	Electronics Mechanic	WG-11
	Industrial Electronic Controls Repairer.	WG-10
	Electronic Test Equipment Repairer.	W
	Electronic Computer Mechanic	W
	Television Station Mechanic	W
Guided missiles.	Electronic Computer Mechanic	W
	Guided Missile Mechanical Repairer.	W
Heavy duty equipment.	Heavy Mobile Equipment Mechanic.	W
Shipbuilding	Electronics Mechanic	W
	Electrician, Ship	W
	Pipefitter, Ship	W
	Shipfitter	W
	Shipwright	W
	Machinist (Marine)	W
Sighting and fire control	Electronic Computer Mechanic	W
	Fire Control Instrument Repairman.	W
	Electronic Fire Control Systems Repairer.	W
	Electronic Fire Control Systems Repairer.	W
	Electronic Fire Control Systems Repairer.	W
Small arms	Small Arms Repairer	W

(b) For nonappropriated fund
veys, a lead agency must obtain p
approval of OPM to add a job
listed in § 532.223 of this subpart.

[55 FR 46180, Nov. 1, 1990]

§ 532.317 Use of data from the nea similar area.

(a)(1) For prevailing rate employ
other than those in the Departmen
Defense, the lead agency shall, in
tablishing the regular schedule un
the provisions of this subpart, anal
and use the acceptable data from
nearest similar wage area toget
with the data obtained from inside
local wage survey area. The regu
schedule for Department of Defe
prevailing rate employees shall
based on local wage data only.

(2) The total number of job matc
obtained from the nearest simi
wage area shall be equal to
number required for adequacy
§ 532.309(a) (2) and (3) of this subp
for appropriated fund surveys a
§ 532.309(b)(2) of this subpart for no
appropriated fund surveys.

(3) Data shall be selected for inc
sion on the basis of the most popula
survey jobs as determined by
weighted job matches found in
dominant industry in the selected r

erence area. In identifying survey jobs for which reference area samples will be included, the jobs required at limited grade ranges shall be selected before jobs in the unlimited grade range. When there is a tie in the selection procedure, the highest graded job shall be selected first.

(4) If there are two dominant industries for which data are obtained from nearest similar areas, the procedure described in paragraph (a)(2) of this section shall be applied independently for each of the specialized industries.

(b)(1) The wage rates established for a grade by using data from the nearest similar area may not exceed the wage rates for the same grade in the nearest similar area.

(2) If data are obtained from two nearest similar areas for two dominant industries, the wage rates established for a grade by using these data may not exceed the higher of the wage rates for the same grade in the two nearest similar areas.

(c) The wage data obtained from the nearest similar area or areas may not be used to reduce the wage rates for any grade in the local area below the rates that would be established for that grade without the use of the data from the nearest similar area or areas.

[46 FR 21344, Apr. 10, 1981, as amended at 54 FR 38197, Sept. 15, 1989. Redesignated and amended at 55 FR 46179, Nov. 1, 1990]

Subpart D—Pay Administration

§ 532.401 Definitions.

In this subpart:

Change to a lower grade means a change of an employee, while continuously employed, to a job or grade level with a lower representative rate.

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the grade and step occupied by the employee and the rate of pay for the next higher step of that grade, except in the situations specified in § 532.417 of this subpart. In the case of a promotion, the grade and step occupied means the grade and step to which promoted.

Existing scheduled rate of pay means the scheduled rate of pay received immediately before the effective date of a transfer, reassignment, promotion, change to a lower grade, within-grade increase, or revision of a wage schedule.

Highest previous rate means the highest scheduled rate of pay previously paid to a person while employed in a job in any branch of the Federal Government, a mixed-ownership corporation, or the government of the District of Columbia. It is based on a regular tour of duty under an appointment not limited to 90 days or less, or for a continuous period of no less than 90 days under one or more appointments without a break in service.

Promotion means a change of an employee, while continuously employed, to a job or grade level with a higher representative rate than his/her current grade; or retained grade, if applicable.

Rate of basic pay means the scheduled rate of pay plus any night or environmental differential.

Reassignment means a change of an employee, while serving continuously in the same agency, from one job to another without promotion or change to a lower grade.

Representative rate means the going rate, i.e., the rate or step keyed to the prevailing rate determination. For example:

(1) The established rate on a single rate schedule;

(2) The second rate on a five-rate regular wage schedule;

(3) The fourth rate on the General Schedule; or

(4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

Retained rate means the rate of pay an employee is receiving which is higher than the maximum scheduled rate of pay of the Federal Wage System grade or pay level to which the employee is assigned.

Scheduled rate of pay means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

[46 FR 21344, Apr. 10,1981, as amended at 55 FR 46180, Nov. 1, 1990]

§ 532.403 New appointments.

(a) Except as provided in paragraphs (b) and (c) of this section, a new appointment to a position shall be made at the minimum rate of the appropriate grade.

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointees' special qualifications.

(c) An agency shall make a new appointment at a step-rate above the minimum rate of a grade if the lead agency for the wage area has designated, in accordance with § 532.229, a step-rate above the first step-rate of a grade as the minimum step-rate at which a position may be filled.

§ 532.405 Use of highest previous rate.

(a)(1) Subject to the provisions of § 532.407 of this subpart and Part 536 of this chapter, when an employee is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the pay at any rate of the new grade which does not exceed the employee's highest previous rate.

(2) However, if the employee's highest previous rate falls between two step-rates of the new grade, the agency may fix the pay at the higher of the two.

(b)(1) When an employee's type of appointment is changed in the same job, an agency may continue to pay the existing scheduled rate or may pay any higher rate of the grade which does not exceed the employee's highest previous rate.

(2) However, if the highest previous rate falls between two step rates of the grade, the agency may pay the higher rate.

(c)(1) The highest previous rate, if earned in a wage job, is the current rate of the grade and step-rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher.

(2) If earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and rate of that schedule.

§ 532.407 Promotion.

(a) An employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted.

(b) If there is no rate in the grade to which an employee is promoted which meets the requirement of paragraph (a) of this section the employee shall be entitled to the higher of: (1) the existing scheduled rate of pay in accordance with Part 536 of this Chapter; or (2) the maximum scheduled rate of the grade to which promoted.

(c) If the promotion is to a position in a different wage area, the agency shall determine the employee's pay entitlement as if there were two pay actions—a promotion and a reassignment—and shall process them in the order which gives the employee the maximum benefit.

§ 532.409 Grading or regrading of positions.

Except as provided in § 532.703(b)(10), a change in an employee's rate of basic pay as a result of the grading or regrading of the employee's position shall be effective on the date the grading or regrading action is finally approved by the agency or on a subsequent specifically stated date.

§ 532.411 Details.

An appropriated fund employee detailed to a position other than the position to which appointed shall be paid at the rate of the position to which appointed.

§ 532.413 Simultaneous action.

(a) If an employee becomes entitled to more than one pay change at the same time, the employing agency shall process the pay changes in the order which will provide the maximum benefit, except as required by paragraph (b) of this section.

(b) If an employee becomes entitled to an increase in pay and subject to a personnel or appointment change at the same time, the increased rate of pay is deemed to be the employee's existing scheduled rate of pay when the personnel or appointment change is processed.

§ 532.415 Application of new or revised wage schedules.

(a) The head of each installation or activity in a wage area shall place new or revised wage schedules into effect at the beginning of the first full shift on the date specified on the schedule by the lead agency.

(b) No agency may retroactively change any personnel or pay actions taken between the effective date of a new or revised wage schedule and the date it is actually put into effect if the personnel or pay actions taken during this period of time are more advantageous to an employee than the same personnel or pay action would have been had the new or revised wage schedule been placed into effect on the date specified by the lead agency.

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the rates of the employee's grade on an old wage schedule shall be adjusted to the rate of pay established on a new or revised wage schedule for the same grade and step, regardless of whether the adjustment results in an increase or a decrease in the employee's scheduled rate of pay.

§ 532.417 *Within-grade* increases.

(a) An employee paid under a regular Federal Wage System schedule with a work performance rating of satisfactory or better shall advance automatically to the next higher step within the grade in accordance with section 5343(e)(2) of title 5, United States Code.

(b) Waiting periods for within-grade increases shall begin:

(1) On the first day of a new appointment as an employee subject to this part;

(2) On the first day of a period of service after a break in service or time in a nonppay status in excess of 52 weeks; or

(3) On receipt of an equivalent increase.

(c) Creditable service. The following periods of time shall be considered creditable service for purposes of waiting periods for within-grade increases:

(1) Time during which an employee is in receipt of pay, including periods of leave with pay;

(2) Time during which an employee with a prearranged regular scheduled tour of duty is in a nonpay status to the extent that the time in a nonpay status does not exceed, in the aggregate:

(i) One workweek in the waiting period for step 2;

(ii) Three workweeks in the waiting period for step 3; or

(iii) Four workweeks in the waiting period for steps 4 and 5;

(3) Time during which an employee or former employee is on leave of absence or is separated from Federal service and is entitled to continuation of pay or compensation under subchapter I of chapter 81 of title 5, United States Code. This does not apply to prevailing rate employees within a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(4) A period of military service when:

(i) An employee is on leave of absence to perform such service and returns to pay status through the exercise of a restoration right provided by law, Executive order, or regulation; or

(ii) A former employee is reemployed with the Federal Service not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year. Military service means honorable active service in the Armed Forces, in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the Environmental Science Services Administration after June 30, 1961, but does not include service in the National Guard, except when ordered to active duty in the service of the United States.

(5) The time between an employee's separation from an earlier position and the date of the employee's return to a civilian position through the exercise of a reemployment right granted by law, Executive Order, or regulation;

(6) Time during which an employee is performing service, which is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(7) The time during which an employee is detailed to a non-Federal position under subchapter VI of chapter 33 of title 5, United States Code; and

(8) Nonworkdays intervening between an employee's last regularly scheduled workday in one position and the first regularly scheduled workday in a new position.

(9) Time during which an employee is temporarily employed by another agency in a position covered by this subpart.

(d) Effective date. A within-grade increase shall be effective at the beginning of the first applicable pay period following the day an employee becomes eligible for the increase.

(e) *Equivalent increase.* The following shall not be counted as equivalent increases:

(1) Application of a new or revised wage schedule or application of a new pay or evaluation plan;

(2) Payment of additional compensation in the form of nonforeign or foreign post differentials or nonforeign cost-of-living allowances;

(3) Adjustment of the General Schedule;

(4) Premium payment for overtime and holiday duty;

(5) Payment of night shift differential;

(6) Hazard pay differentials;

(7) Payment of rates above the minimum rate of the grade in recognition of specific qualifications, or in jobs in specific hard-to-fill occupations;

(8) Correction of an error in a previous demotion or reduction in pay;

(9) Temporary limited promotion followed by change to lower grade to the former or a different lower grade;

(10) A transfer or reassignment in the same grade and step to another local wage area with a higher wage schedule;

(11) Repromotion to a former or intervening grade of any employee whose earlier change to lower grade was not for cause and was not at the employee's request; and

(12) An increase resulting from t grant of a quality step increase und the General Schedule.

[46 FR 21344, Apr. 10, 1981, as amended 49 FR 37055, Sept. 21, 1984; 55 FR 461 Nov. 1, 1990]

§ 532.419 Grade and pay retention.

(a) In accordance with secti 9(a)(1) of Pub. L. 92-392 (86 Stat. 56 573), an employee's initial rate of p on conversion to a wage schedule e tablished under the provisions of su chapter IV of chapter 53, title United States Code, shall be dete mined under conversion rules pr scribed by the Office of Personn Management.

(b) Except as provided in paragrap (a) of this section, an employee's elig bility for grade and/or pay retentio shall be determined in accordanc with the provisions of Part 536 of thi title.

Subpart E—Premium Pay and Differentials

§ 532.501 Definitions.

In this subpart:

Administrative workweek means period of seven consecutive calenda days.

Basic workweek for full time em ployees means the days and hour within an administrative workweel which make up the employee's regu larly scheduled 40-hour workweek.

Environmental differential means differential paid for a duty involving unusually severe hazards or working conditions.

Irregular or occasional overtime work means overtime work which is not part of the regularly scheduled administrative workweek.

Night shift differential means the differential paid the employee when the majority of regularly scheduled nonovertime hours worked fall between 3 p.m. and 8 a.m.

Overtime work means authorized and approved hours of work performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek, and includes irregular or occasional overtime work and regular overtime work.

Premium pay means additional compensation for overtime, or Sunday work, and standby duty.

Sunday work means work performed during a regularly scheduled tour of duty within a basic workweek when any part of that work which is not overtime work is performed on Sunday.

Regular overtime work means overtime work which is a part of the regularly scheduled administrative workweek.

Regularly scheduled administrative workweek means:

(1) For full-time employees, the period within an administrative workweek within which employees are scheduled to be on duty regularly.

(2) For part-time employees, it means the days and hours within an administrative workweek during which these employees are scheduled to be on duty regularly.

Tour of duty means the hours of a day, i.e., a daily tour of duty, and the days of an administrative workweek, i.e., a weekly tour of duty, that are scheduled in advance and during which an employee is required to perform on a regularly recurring basis.

§ 532.503 Overtime pay.

(a)(1) Employees shall be paid overtime pay in accordance with sections 5544 and 5550 of title 5, United States Code or, if eligible, under the provisions of the Fair Labor Standards Act of 1938, as amended, whichever provides the greater overtime benefit. The rules for hours of work determinations and overtime pay entitlements for nonexempt employees under the Fair Labor Standards Act are contained in Part 551 of this subchapter.

(2) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Effect of leave on overtime pay.

(1) Hours during which an employee is absent from duty on paid leave during time when the employee otherwise would have been required to be on duty shall be considered hours of work in determining whether the employee is entitled to overtime pay for work performed in excess of eight hours a day or 40 hours a week.

(2) For the purposes of paragraph (b)(1) of this section paid leave includes but is not limited to:

(i) Annual or sick leave;

(ii) Authorized absence on a day off from duty granted by Executive or administrative order; or

(iii) Authorized absence on a legal holiday;

(3) Hours during which an employee is absent from duty on leave without pay during a time when he/she otherwise would have been required to be on duty shall not be considered hours of work in determining whether he/she is entitled to overtime pay for work performed in excess of eight hours in a day or 40 hours in a week.

(c) Callback overtime work. Irregular or occasional overtime work performed by an employee on a day when work was not regularly scheduled for the employee or for which the employee has been required to return to the place of employment shall be considered to be at least two hours in duration for the purpose of overtime pay, regardless of whether the employee performs work for two hours.

(d)(1) An employee regularly assigned to a night shift, who performs overtime work which extends into or falls entirely within a day shift, shall be entitled to overtime pay computed on the night rate.

(2) When the overtime is performed on a nonworkday the employee shall be entitled to overtime pay computed on the rate of the employee's last previous regularly scheduled shift.

(e)(1) An employee regularly assigned to a rotating schedule involving work on both day and night shifts who performs overtime work which extends or falls entirely within the succeeding shift shall be entitled to overtime pay computed on the rate of the employee's regularly scheduled shift in effect for that calendar day.

(2) When the overtime is performed on a nonworkday, the employee shall be entitled to overtime pay computed on the average rate of basic pay for all regularly scheduled shifts worked by the employee during the basic workweek.

§ 532.505 Night shift differentials.

(a) Employees shall be entitled to receive night shift differentials in accordance with section 5343 of title 5, United States Code.

(b) Absence on holidays. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(c) Travel status. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(d) Temporary tour of duty.

(1) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift differential, a temporary detail for training purposes is also included—see 5 CFR 410.602.

(2) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential if a majority of the employee's regularly scheduled nonovertime hours of work on the temporary shift fall within hours having the higher differential.

(3) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential.

(e) Leave with pay.

(1) An employee regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(2) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(3) An employee assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(4) An employee who is not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

§ 532.507 Pay for holiday work.

(a) An employee who is entitled to holiday premium pay and who performs work on a holiday which is not overtime work shall be paid the employee's rate of basic pay plus premium pay at a rate equal to the rate of basic pay.

(b) An employee shall be paid for overtime work performed on a holiday at the same rate as for overtime on other workdays.

(c) An employee who is entitled to holiday premium pay and who is required to report for work on a holiday shall be paid at least two hours of holiday pay whether or not work is actually performed.

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes an 8-hour period of service which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of sections 5544 and 5550 of title 5, United States Code.

§ 532.511 Environmental differentials.

(a) Entitlements to environmental differential pay.

(1) In accordance with section 5343(c)(4) of title 5, United States Code, an employee shall be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by the Office of Personnel Management.

(2) Each installation or activity must evaluate its situations against the guidelines issued by the Office of Personnel Management to determine whether the local situation is covered by one or more of the defined categories.

(b) Amount of environmental differential payable.

(1) An employee entitled to an environmental differential shall be paid an amount equal to the percentage rate authorized by the Office of Personnel Management for the category in which the working condition or hazard falls, multiplied by the rate for the second step of WG-10 for the appropriated fund employees and NA-10 for the nonappropriated fund employees on the current regular non-supervisory wage schedule for the wage area for which the differential is payable, counting one-half cent and over as a whole cent.

(2) An employee entitled to an environmental differential on an actual exposure basis shall be paid a minimum of one hour's differential pay for the exposure. For exposure beyond one hour, the employee shall be paid in increments of one quarter hour for each 15 minutes or portion thereof in excess of 15 minutes. Entitlement begins with the first instance of exposure and ends one hour later, except that when exposure continues beyond the hour, it shall be considered ended at the end of the quarter hour in which exposure actually terminated.

(3) An employee entitled to an environmental differential on the basis of hours in a pay status shall be paid for all hours in a pay status on the day on which he/she is exposed to the situation.

(4) An employee may not be paid more than one environmental differential for a particular period of work.

(5) The payment of environmental differential pay is computed on the basis of the highest environmental differential rate authorized during the period of entitlement.

(6) The number of hours an employee is paid environmental differential shall not exceed the number of hours of duty performed by the employee on the day of exposure except as required by paragraph (b)(3) of this section.

(c) *Basic pay.* Environmental differential pay is part of basic pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work), the amount from which retirement deductions are made, and the amount on which group life insurance is based. It is not part of basic pay for purposes of lump-sum annual leave payments and severance pay nor is its loss an adverse action.

(d) The schedule of environmental differentials is set out as Appendix A to this subpart and is incorporated in and made a part of this section.

[46 FR 21344, Apr. 10, 1981, as amended at 49 FR 49841, Dec. 24, 1984; 55 FR 46180, Nov. 1, 1990]

§ 532.513 Flexible and compressed work schedules.

Federal Wage System employees, other than Nonappropriated Fund employees of the Armed Forces as defined in 5 U.S.C. 2105(c), who are authorized to work flexible and compressed work schedules under sections 6122 and 6127 of 5 U.S.C. shall be paid premium pay in accordance with the provisions of subchapter II of chapter 61 of title 5, United States Code. Subpart D of Part 610 of this title supplements that subchapter and must be read with it.

[49 FR 37055, Sept. 21, 1984]

APPENDIX A TO SUBPART E OF PART 532—SCHEDULE OF ENVIRONMENTAL DIFFERENTIALS PAID FOR EXPOSURE TO VARIOUS DEGREES OF HAZARDS, PHYSICAL HARDSHIPS, AND WORKING CONDITIONS OF AN UNUSUAL NATURE

This appendix lists the environmental differentials authorized for exposure to various degrees of hazards, physical hardships, and working conditions of an unusual nature.

PART I.—PAYMENT FOR ACTUAL EXPOSURE

Differential rate (percent)	Category for which payable	Effective date
100	1. *Flying.* Participating in flights under one or more types of the following conditions a. Test flights of a new or repaired plane or modified plane when the repair or modification may affect the flight characteristics of the plane;	Nov. 1, 1970

PART I.—PAYMENT FOR ACTUAL EXPOSURE—Continued

Differential rate (percent)	Category for which payable	Effective d
	b. Flights for test performance of plane under adverse conditions such as in low altitude or severe weather conditions, maximum load limits, or overload; c. Test missions for the collection of measurement data where two or more aircraft are involved and flight procedures require formation flying and/or rendezvous at various altitudes and aspect angles; d. Flights deliberately undertaken in extreme weather conditions such as flying into a hurricane to secure weather data; e. Flights to deliver aircraft which have been prepared for one-time flight without being test flown prior to delivery flight; f. Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests; g. Low-level flights in small aircraft including helicopters at altitude of 500 feet and under in daylight and 1,000 feet and under at night when the flights are over mountainous terrain, or in fixed-wing aircraft involving maneuvering at the heights and times specified above, or in helicopters maneuvering and hovering over water at altitudes of less than 500 feet; h. Low-level flights in an aircraft flying at altitudes of 200 feet and under while conducting wildlife surveys and law enforcement activities, animal depredation abatement and making agricultural applications, and conducting or facilitating search and rescue operations; flights in helicopters at low levels involving line inspection, maintenance, erection, or salvage operations; i. Flights involving launch or recovery aboard an aircraft carrier; j. Reduced gravity light testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through 2 gravity conditions;	
25	2. *High work* a. Working on any structure of at least 100 feet above the ground, deck, floor or roof, or from the bottom of a tank or pit; b. Working at a lesser height: (1) If the footing is unsure or the structure is unstable; or (2) If safe scaffolding, enclosed ladders or other similar protective facilities are not adequate (for example, working from a swinging stage, boatswain chair, a similar support); or (3) If adverse conditions such as darkness, steady rain, high wind, icing, lightning or similar environmental factors render working at such height(s) hazardous.	Nov. 1, 1970.
15	3. *Floating targets.* Servicing equipment on board a target ship or barge in which the employee is required to board or leave the target vessel by small boat or helicopter.	Nov. 1, 1970.
4	4. *Dirty work.* Performing work which subjects the employee to soil of body or clothing: a. Beyond that normally to be expected in performing the duties of the classification; and b. Where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health considerations (excessive temperature, asthmatic conditions, etc); or c. When the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort.	Nov. 1, 1970.
4	5. *Cold work.* a. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit).	Nov. 1, 1970.
	b. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit) where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.	Mar. 13, 1977.
4	6. *Hot work.* a. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit.	Nov. 1, 1970.
	b. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.	Mar. 13, 1977.
4	7. *Welding preheated metals.* Welding various metals or performing an integral part of the welding process when the employee must work in confined spaces in which large sections of metal have been preheated to 150 degrees Fahrenheit or more, and the discomfort is not alleviated by protective devices or other means, or discomforting protective equipment must be worn.	Nov. 1, 1970.
4	8. *Micro-soldering or wire welding and assembly.* Working with binocular-type microscopes under conditions which severely restrict the movement of the employee and impose a strain on the eyes, in the soldering or wire welding and assembly of miniature electronic components.	Nov. 1, 1970.
25	9. *Exposure to hazardous weather or terrain.* Exposure to dangerous conditions of terrain, temperature and/or wind velocity, while working or traveling when such exposure introduces risk of significant injury or death to employees; such as the following:	July 1, 1972.

PART I.—PAYMENT FOR ACTUAL EXPOSURE—Continued

Differential rate (percent)	Category for which payable	Effective date
	Examples: —Working on cliffs, narrow ledges, or steep mountainous slopes, with or without mechanical work equipment, where a loss of footing would result in serious injury or death. —Working in areas where there is a danger of rockfalls or avalanches. —Traveling in the secondary or unimproved roads to isolated mountaintop installations at night, or under adverse weather conditions (snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snowslides. —Traveling in the wintertime, either on foot or by vehicle, over secondary or unimproved roads or snowtrails, in sparsely settled or isolated areas to isolated installations when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 10 feet. —Working or traveling in sparsely settled or isolated areas with exposure to temperatures and/or wind velocity shown to be of considerable or very great danger on the windchill chart (Exhibit 1 of this appendix), and shelter (other than temporary shelter) or assistance is not readily available. —Snowplowing or snow and ice removal on primary, secondary or other class of roads, when (a) there is danger of avalanche or (b) there is danger of missing the road and falling down steep mountainous slopes, because of lack of snow-stakes, "whiteout" conditions, or sloping icepack covering the snow.	
25	10. *Unshored work.* Working in excavation areas before the installation of proper shoring or other securing barriers, or in catastrophe areas, where there is a possibility of cave-in, building collapse or falling debris when such exposures introduce risk of significant injury or death to employees, such as the following: *Examples:* —Working adjacent to the walls of an unshored excavation at depths greater than six feet (except when the full depth of the excavation is in stable solid rock, hard slag, or hard shale, or the walls have been graded to the angle of repose; that is, where the danger of slides is practically eliminated), when work is performed at a distance from the wall which is less than the height of the wall. —Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado or similar cause. —Working underground in the construction and/or inspection of tunnels and shafts before the necessary lining of the passageway have been installed. —Duty underground in abandoned mines where lining of tunnels or shafts is in a deteriorated condition.	July 1, 1972.
15	11. *Ground work beneath hovering helicopter.* Participating in operation to attach or detach external load to helicopter hovering just overhead.	July 1, 1972.
15	12. *Hazardous boarding or leaving of surface craft.* Boarding or leaving vessels or transferring equipment to or from a surface craft under adverse conditions of foul weather, ice, or night when sea state is high (three feet and above), and deck conditions and/or wind velocity in relation to the size of the craft introduce unusual risks to employees. *Examples:* —Boarding or leaving vessels at sea. —Boarding or leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral-surrounded shorelines. —Transferring equipment between a small boat and a rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock. —Boarding or leaving, or transferring equipment from or to ice covered floats, rafts, or similar structures when there is danger of capsizing due to the added weight of the ice.	July 1, 1972.
8	13. *Cargo handling during lightering operations.* Off-lading of cargo and supplies from surface ships to Landing Craft-Medium (LCM) boats when swells or wave action are sufficiently severe as to cause sudden listing or pitching of the deck surface or shifting or falling of equipment, cargo, or supplies which could subject the employee to falls, crushing, ejection into the water or injury by swinging cargo hooks.	July 1, 1972.
15	14. *Duty aboard surface craft.* Duty aboard a surface craft when the deck conditions or sea state and wind velocity in relation to the size of the craft introduces the risk of significant injury or death to employees, such as the following: Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 35 m.p.h. (classified as gale winds) or in water search and rescue operations at night. —Participating as a member of a weather projects team when work is performed under adverse weather conditions, when winds are blowing at 35 m.p.h., and/ or when seas are in excess of 14 feet, or when working on outside decks when decks are slick and icy when swells are in excess of 3 feet.	July 30, 1972.

PART I.—PAYMENT FOR ACTUAL EXPOSURE—Continued

Differential rate (percent)	Category for which payable	Effective
	—When embarking, disembarking or traveling in small craft (boat) on Lake Ponchartrain when wind direction is from north northeast or northwest, and wind velocity is over 15 knots; or when travel on Lake Ponchartrain is necessary in small craft, without radar equipment, due to emergency or unavoidable conditions and the trip is made in dense fog run procedures —Participating in deep research vessel sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea state is high (12-knot winds and 3-foot waves) and the work is done on relatively unprotected deck areas —Transferring from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are under way —Duty performed on floating platforms, camels, or rafts, using tools equipment or materials associated with ship repair or construction activities, where swells or wave action are sufficiently severe to cause sudden listing or pitching of the deck surface or dislodgement of equipment which could subject the employee to falls, crushing, or ejection into the water	
50	15. *Work at extreme heights.* Working at heights 100 feet or more above the ground, deck, floor or roof, or from the bottom of a tank or pit on such open structures as towers, girders, smokestacks and similar structures: (1) If the footing is unsure or the structure is unstable; or (2) If safe scaffolding, enclosed ladders or other similar protective facilities are not adequate (for example, working from a swinging stage, boatswain chair, or a similar support); or (3) If adverse conditions such as darkness, steady rain, high wind, icing, lightning, or similar environmental factors render working at such height(s) hazardous	Oct. 22, 1972.
6	16. *Fibrous Glass Work.* Working with or in close proximity to fibrous glass material which results in exposure of the skin, eyes or respiratory system to irritating fibrous glass particles or slivers where exposure is not practically eliminated by the mechnical equipment or protective devices being used.	Feb. 28, 1975.
50	17. *High Voltage Electrical Energy.* Working on energized electrical lines rated at 4,160 volts or more which are suspended from utility poles or towers, when adverse weather conditions such as steady rain, high winds, icing, lightning, or similar environmental factors make the work unusually hazardous.	Apr. 11, 1977.
6	18. *Welding, Cutting or Burning in Confined Spaces.* Welding, cutting, or burning within a confined space which necessitates working in a horizontal or nearly horizontal position, under conditions requiring egress of at least 14 feet over and through obstructions including: (1) access openings and baffles having dimensions which greatly restrict movements, and (2) irregular inner surfaces of the structure or structure components.	Jan. 18, 1978.

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective
50	1. *Duty aboard submerged vessel.* Duty aboard a submarine or other vessel such as a deep-research vehicle while submerged.	Nov. 1, 1970.
8	2. *Explosives and incendiary material—high degree hazard.* Working with or in close proximity to explosives and incendiary material which involves potential personal injury such as permanent or temporary, partial or complete loss of sight or hearing, partial or complete loss of any or all extremities; other partial or total disabilities of equal severity; and/or loss of life resulting from work situations wherein protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for such personal injury. Normally, such work situations would result in extensive property damage requiring complete replacement of equipment and rebuilding of the damaged area; and could result in personal injury to adjacent employees. *Examples* —Working with, or in close proximity to operations involved in research, in testing, manufacturing, inspection, renovation, maintenance and disposal, such as: —Screening, blending, drying, mixing, and pressing of sensitive explosives and pyrotechnic compositions such as lead azide, black powder and photoflash powder —Manufacture and distribution of raw nitroglycerine —Nitration, neutralization, crystallization, purification, screening and drying of high explosives —Manufacture of propellants, high explosives and incendiary materials	Nov. 1, 1970.

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective date
	—Melting, cast loading, pellet loading, drilling, and thread cleaning of high explosives —Manufacture of primary or initiating explosives such as lead azide —Manufacture of primer or detonator mix —Loading and assembling high-energy output flare pellets —All dry-house activities involving propellants or explosives —Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive explosives and incendiary materials —All operations involving fire fighting on an artillery range or at an ammunition manufacturing plant or storage area, including heavy duty equipment operators, truck drivers, etc —All operations involving regrading and cleaning of artillery ranges —At-sea shock and vibration tests. Arming explosive charges and/or working with, or in close proximity to, explosive-armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies —Handling or engaging in destruction operations on an armed (or potentially armed) warhead	
4	3. *Explosives and incendiary material—low degree hazard.* a. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used	Nov. 1, 1970
	b. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used and wherein protective device and/or safety measures have not practically eliminated the potential for such injury *Examples* —All operations involving loading, unloading, storage and hauling of explosive and incendiary ordnance material other than small arms ammunition. (Distribution of raw nitroglycerine is covered under high degree hazard—see category 2 above.) —Duties such as weighing, scooping, consolidating and crimping operations incident to the manufacture of stab, percussion, and low energy electric detonators (initiators) utilizing sensitive primary explosives compositions where initiation would be kept to a low order of propagation due to the limited amounts permitted to be present or handled during the operations —Load, assembly and packing of primers, fuses, propellant charges, lead cups, boosters, and time-train rings —Weighing, scooping, loading in bags and sewing of ignitor charges and propellant zone charges —Loading, assembly, and packing of hand-held signals, smoke signals, and colored marker signals —Proof-testing weapons with a known overload of powder or charges —Arming/disarming or the installation/removal of any squib, explosive device, or component thereof, connected to or part of a solid propulsion system, including work situations involving removal, inspection, test and installation of aerospace vehicle egress and jettison systems and other cartridge actuated devices and rocket assisted systems or components thereof, when accidental or inadvertent operation of the system or a component might occur	Mar. 13, 1977
8	4. *Poisons (toxic chemicals)—high degree hazard.* Working with or in close proximity to poisons (toxic chemicals), other than tear gas or similar irritants, which involves potential serious personal injury such as permanent or temporary, partial or complete loss of faculties and/or loss of life including exposure of an unusual degree to toxic chemicals, dust, or fumes of equal toxicity generated in work situations by processes required to perform work assignments wherein protective devices and/or safety measures have been developed but have not practically eliminated the potential for such personal injury *Examples* —Handling and storing toxic chemical agents including monitoring of areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work relating to disposal of deteriorated material (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous system, possible death) —Renovation, maintenance, and modification of toxic chemicals, guided missiles, and selected munitions —Operating various types of chemical engineering equipment in a restricted area such as reactors, filters, stripping units, fractioning columns, blenders, mixers, pumps, and the like utilized in the development, manufacturing, and processing of toxic or experimental chemical warfare agents	Nov. 1, 1970

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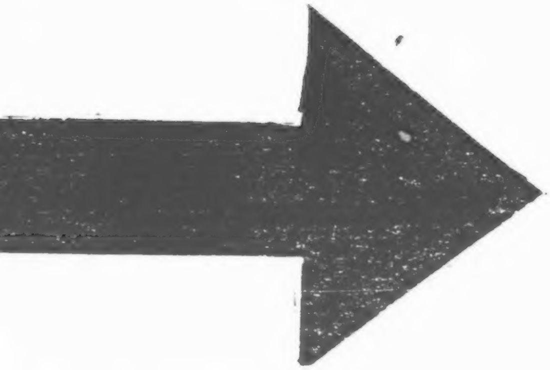

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective d
	—Demilitarizing and neutralizing toxic chemical munitions and chemical agents —Handling or working with toxic chemicals in restricted areas during production operations —Preparing analytical reagents, carrying out colorimetric and photometric techniques, injecting laboratory animals with compounds having toxic, incapacitating or other effects —Recording analytical and biological tests results where subject to above types of exposure —Visually examining chemical agents to determine conditions or detect leaks in storage containers —Transferring chemical agents between containers —Salvaging and disposing of chemical agents	
4	5. *Poisons (toxic chemicals)—low egress hazard*. a. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents	Nov. 1, 1970.
	b. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury *Example* —Handling for shipping, marking, labeling, hauling and storing loaded containers of toxic chemical agents that have been monitored	Mar. 13, 1977
8	6. *Micro-organisms—high degree hazard*. Working with or in close proximity to micro-organisms which involves potential personal injury such as death, or temporary, partial, or complete loss of faculties or ability to work due to acute, prolonged, or chronic disease. These are work situations wherein the use of safety devices and equipment, medical prophylactic procedures such as vaccines and antiserums and other safety measures do not exist or have been developed but have not practically eliminated the potential for such personal injury *Examples* —Direct contact with primary containers of organisms pathogenic for man such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material. Operating or maintaining equipment in biological experimentation or production —Cultivating virulent organisms on artificial media, including embryonated hen's eggs and tissue cultures where inoculation or harvesting of living organisms is involved for production of vaccines, toxides, etc., or for sources of material for research investigations such as antigenic analysis and chemical analysis	Nov. 1, 1970
4	7. *Micro-organisms—low degree hazard*. a. Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material	Nov. 1, 1970.
	b. Working with or in close proximity to micro-organisms in situations for which the nature of the work doas not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material and wherein the use of safety devices and equipment and other safety measures have not practically eliminated the potential for personal injury	Mar. 13, 1977
8	8. *Pressure chamber and centrifugal stress*. Exposure in pressure chamber which subjects employee to physical stresses or where there is potential danger to participants by reason of equipment failure or reaction to the test conditions; or exposure which subjects an employee to a high degree of centrifugal force which causes an unusual degree of discomfort *Examples* —Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures —Participating in altitude chamber studies ranging from 18,000 to 150,000 feet either as subject or as observer exposed to the same conditions as the subject —Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure	July 1, 1972.

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PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective date
	—Participating as a subject in a rotational flight simulator in studies involving continuous rotation in one axis through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes	
8	9. *Work in fuel storage tanks.* When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank	July 1, 1972
	10. *Firefighting.* Participating or assisting in firefighting operations on the immediate fire scene and in direct exposure to the hazards inherent in containing or extinguishing fires	July 1, 1972
25	*High degree*	
	—Fighting forest and range fires on the fireline	
8	*Low degree*	
	—All other firefighting	
8	11. *Experimental landing/recovery equipment tests*	
	—Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks	July 1, 1972
8	12. *Land impact or pad abort of space vehicle.* Actual participation in dearming and safing explosive ordnance, toxic propellant, and high-pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition	July 1, 1972
4	13. *Mass explosives and/or incendiary material.* Working within a controlled danger area in, on, or around wharves, transfer areas, or temporary holding areas in a transshipment facility when explosives are in the process of being shifted to or from a conveyance	July 1, 1972
	Such an area shall include land and sea areas within which it has been determined that personnel are subject to an unusual degree of exposure or liability to serious injury or death from potential explosive effect	
	A transshipment facility for this purpose is a port or sea terminal established for the marshalling or temporary assembly of explosives prior to shipment where amounts in excess of 250,000 pounds net explosive weight (NEW) are present on a regular or recurring basis	
4	14. *Duty aboard aircraft carrier.* Duty aboard an aircraft carrier when exposed to hazards connected with aircraft launch and recovery:	July 1, 1972
	Examples	
	—Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery and refueling operations	
	—Operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations	Mar 4, 1974
8	15. *Participating in missile liquid propulsion or solid propulsion situations.* Participating in research and development, or preoperational test and evaluation situation involving missile liquid or solid propulsion systems where mechanical, or other equipment malfunction, or accidental combination of certain fuels and/or chemicals, or transient voltage and current buildup on or within the system when the system is in a "go" condition on the test stand, or sled, can result in explosion, fire, premature ignition or firing	
	Examples	
	—Test stand or track tests, when adequate protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for personal injury, under any of the following conditions:	
	a. Tanks are being pressurized above normal servicing pressure	
	b. Assembly, disassembly, or repair of contaminated plumbing containing inhibited red fuming nitric acid and unsymmetrical dimethylhydrazine or other hypergolic fuels is required	
	c. Fueling and defueling	
	—Hoisting hypergolic liquid fueled systems into, or out of, a test stand, where the working area is confined, and external plumbing is present resulting in a situation where the plumbing may be damaged causing a leak	
	—Tests on foreign missiles where technical data is questionable or not available	
	—Manned test firings of small, close support missiles for which safety performance data are not yet available	
	—Removal of a missile, propulsion system or component thereof from a test stand, fixture, or environmental chamber where there is reason to believe that the item may be unusually hazardous due to damage resulting from the test	

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PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective date
8	16. *Asbestos.* Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury	Mar. 9, 1975.

Exhibit 1

WINDCHILL CHART

	Local temperature (°F)										
Wind Speed (MPH)	32	23	14	5	−4	−13	−22	−31	−40	−49	−58
Calm	32	23	14	5	−4	−13	−22	−31	−40	−49	−58
5	29	20	10	1	−9	−18	−28	−37	−47	−56	−65
10	18	7	−4	−15	−26	−37	−48	−59	−70	−81	−92
15	13	−1	−13	−25	−37	−49	−61	−73	−85	−97	−109
20	7	−6	−19	−32	−44	−57	−70	−83	−96	−109	−121
25	3	−10	−24	−37	−50	−64	−77	−90	−104	−117	−130
30	1	−13	−27	−41	−54	−68	−82	−97	−109	−123	−137
35	−1	−15	−29	−43	−57	−71	−85	−99	−113	−127	−142
40	−3	−17	−31	−45	−59	−74	−87	−102	−116	−131	−145
45	−3	−18	−32	−46	−61	−75	−89	−104	−118	−132	−147
50	−4	−18	−33	−47	−62	−76	−91	−105	−120	−134	−148
	Little danger		Considerable danger			Very great danger					

For properly clothed persons

Danger from freezing of exposed flesh

[55 FR 46180, Nov. 1, 1990; 55 FR 52267, Dec. 21, 1990; 55 FR 53608, Dec. 31, 1990]

Subpart F—Job Grading System

32.601 General.

The Office of Personnel Manage-
ent shall establish a job grading
stem in accordance with section 5346
title 5, United States Code. Appro-
ate instructions to agencies on the
plication of the job grading system
all be published by the Office of
rsonnel Management. Agencies are
uired to grade all jobs subject to
s part in accordance with such in-
uctions.

ubpart G—Job Grading Reviews and Appeals

2.701 General.

prevailing rate employee may at
time appeal the occupational
ies, grade, or title to which the em-
yee's job is assigned, but may not
eal under this subpart the stand-
s established for the job, nor other
tters such as the accuracy of the
description, the rate of pay, or the
priety of a wage schedule rate. The
ng of a job-grading appeal does not
ate any other appeal or grievance
ts which may be available under
licable law, rule, regulation, or ne-
ated agreement.

FR 18561, May 21, 1986]

2.703 Agency review.

) Each agency shall establish a
em processing an employee's appli-
on for review of the correctness of
series, grade or title of the employ-
job.

TE: Application for review will be here-
referred to as an "application".

) In establishing the system re-
ed by this subpart, an agency, as a
imum, shall provide that the fol-
ng requisites be met.

) The provisions of the system
l be published and the agency's
loyees shall be informed where a
ished copy is available for review.

An application shall be in writing
contain the reasons the employee
ves the position is erroneously
ed.

An application may be filed at
time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss or pay, in order to be entitled to retroactive corrective action, an employee must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade.

(4) An employee may select a representative, and the employee and the representative, when the representative is also employed by the same agency, shall be granted a reasonable time in presenting the application and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting the application.

(5) An employee shall promptly furnish such facts as may be requested by the agency.

(6) An application shall be canceled and the employee so notified in the following circumstances:

(i) On receipt of a written request by the employee;

(ii) Failure of the employee to furnish required information or otherwise fail to proceed with the advancement of his application in a timely manner; however, instead of cancellation for failure by the employee to prosecute, the application may be adjudicated by the agency if the information is sufficient for that purpose; or

(iii) On notice that the employee has left the job, except when the employee would be entitled to the retroactive benefits including benefits allowable after the death of an employee appellant.

(7) The application shall be processed and decided promptly. No more than one level of review may be established within an agency before a final decision is issued, and that level of review, when possible, must be above the level of classification authority which classified the position.

(8) When an employee applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed

when the initial application to the agency was submitted in accordance with paragraph (b)(3) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(9) The right to a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit or that circumstances beyond the employee's control prevented filing the application within the prescribed time limit.

(10) The effective date of a change in the series, title or grade of a job shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision. However, in no case may it be later than the beginning of the first pay period which begins after the 60th calendar day from the date the application was filed. However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation. The retroactive reclassification may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and responsibilities later assigned.

(11) When an application has been properly filed and the employee dies before the application has been processed, if a favorable decision would entitle the employee to retroactive corrective action, the application will be processed to completion after the employee's death and any appropriate corrective action made by amending the records of the agency.

(12) The decision on an application shall:

(i) Be based on the record,

(ii) Be in writing,

(iii) Inform the employee either in the decision or as an attachment to the decision of the reasons for the decision, including an analysis of the employee's job, i.e., comparing the job with the appropriate standard, and

(iv) Inform the employee of the right to appeal the decision to the Office of Personnel Management and of the time limits within which the application must be filed.

(c) The agency is responsible for compiling and maintaining a job-grading review file which will constitute the record and which will not contain any document or information which the employee has not been given an opportunity to review.

[46 FR 21344, Apr. 10, 1981, as amended at 51 FR 18561, May 21, 1986]

§ 532.705 Appeal to the Office of Personnel Management.

(a)(1) An employee may appeal the occupation series, grade or title of the job to the appropriate office of the Office of Personnel Management only (i) after the agency has issued a decision under the system established under § 532.703; and (ii) if the employee files the appeal with the Office of Personnel Management within 15 calendar days after receipt of the decision of the agency.

(2) The Office of Personnel Management may extend this time limit if it is shown that the employee was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond the employee's control prevented filing an appeal within the prescribed time limit.

(b) An employee shall make the appeal in writing and shall identify specifically the portions of the decision or job analysis of the agency with which the employee disagrees.

(c) The Office of Personnel Management shall base its decision on the record established in the agency, except that when the Office of Personnel Management investigates or audits the job it may take the results of the investigation or audit into consideration. In the event the Office of Personnel Management audits the job, the employee's representative may not be present.

(d) The Office of Personnel Manage-
ient shall notify the employee and
ne agency in writing of its decision.
he effective date of a change in the
ries, title and grade of a job directed
y the Office of Personnel Manage-
ent shall be specified in the decision
the Office of Personnel Manage-
ent, computed from the date the em-
oyee filed the application with the
gency, and determined under
532.703(b)(10). However, when the
ecision will result in a downgrading
other job-grading action that will
duce the pay of the incumbent of
e job, the effective date may not be
t earlier than the date on which the
cision can be effected in accordance
th procedures required by applicable
w and regulation.

e) The appeal of an employee shall
canceled and the employee so noti-
d in the following circumstances:

1) On receipt of the employee's
itten request;

2) On failure to prosecute, when the
ployee does not furnish requested
ormation and duly proceed with the
vancement of the appeal; however,
tead of cancellation for failure to
secute, an appeal may be adjudicat-
if the information is sufficient for
at purpose. The Office of Personnel
nagement may reopen a canceled
peal on a showing that circum-
nces beyond the control of the em-
yee prevented the employee from
secuting the appeal; or

3) On notice that the employee has
the job, except when entitled to
roactive benefits, including benefits
owable after the death of an appel-
t.

) The Office of Personnel Manage-
nt may, at its discretion, reopen
reconsider any job-grading deci-
made by a regional office when
uested by an employee or an
ncy. This authority may be used
ler circumstances such as the fol-
ing:

) An employee or an agency pre-
ts material facts not previously
sidered by the regional office in-
ed;

) There is room for reasonable
bt as to the appropriateness of a
onal office decision; or

(3) The potential impact of a regional office decision on similar jobs under other regional offices is sufficiently significant to make central office review of the decision desirable.

(g) The Director of the Office of Personnel Management may, at his or her discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director of the Office of Personnel Management.

(h) A final decision by the Office of Personnel Management constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

[46 FR 21344, Apr. 10, 1981, as amended at 51 FR 18561, May 21, 1986]

§ 532.707 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under this part. For the purposes of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

[50 FR 3313, Jan. 24, 1985]

PART 534—PAY UNDER OTHER SYSTEMS

Subpart A—[Reserved]

Subpart B—Student-Employees in Government Hospitals

Sec.
534.201 General.
534.202 Coverage.
534.203 Maximum stipends.
534.204 Previous authorizations.

Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

534.301 Approval of agency pay determinations and adjustments.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

534.401 Definitions and setting individual basic pay.
534.402 Aggregate compensation.
534.403 Performance awards.
534.404 Pay computation for members of the Senior Executive Service.

AUTHORITY: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5383, 5384, 5385, and 5541.

Subpart A—[Reserved]

Subpart B—Student-Employees in Government Hospitals

SOURCE: 44 FR 54693, Sept. 21, 1979, unless otherwise noted.

§ 534.201 General.

Under subchapter V of chapter 53 of title 5, United States Code (U.S.C. 5351-5356), agencies may pay stipends and provide certain services to certain student-employees assigned or attached to hospitals, clinics, or medical or dental laboratories operated by agencies. Student-employees covered under the program are excluded from certain provisions of law relating to classification, General Schedule pay, premium pay, leave, and hours of duty. This subpart authorizes the coverage of certain positions under this program and establishes maximum stipends for student-employees in the program.

§ 534.202 Coverage.

In addition to the student-employees specified in 5 U.S.C. 5351(2)(A), the following student-employees are covered under this program, provided they are assigned or attached principally for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency:

(1) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee is a registered student at an accredited academic institution and that the assignment or attachment for training purposes to the hospital, clinic, or medical or dental laboratory is a part of a medical or dental training program accredited by an appropriate accrediting body;

(2) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee, during the period of assignment or attachment to the hospital, clinic, or medical or dental laboratory, will receive experience or training that is required to obtain a certificate or license in a medical or dental field; or

(3) Any student-employee not otherwise covered under this program whom the Office of Personnel Management approves for coverage as a student-employee under this program.

§ 534.203 Maximum stipends.

(a) Except as authorized under paragraph (b) or (c) of this section, stipends are to be set by the agency, subject to the maximum stipends prescribed in the following table:

Maximum Stipends Prescribed

Code symbol	Academic level of approved training program	Maximums by grade and step [1]
	Below high school graduation	GS-1-1 (minus 3 steps).
	First year college undergraduate	GS-2-1 (minus 3 steps).
	Second year college undergraduate	GS-3-1 (minus 3 steps).
	Third year college undergraduate	GS-3-3 (minus 3 steps).
	Fourth year college undergraduate	GS-4-2 (minus 3 steps).
	First year postgraduate predoctoral	GS-5-1 (minus 3 steps).
	Second year postgraduate predoctoral	GS-7-1 (minus 3 steps).
	Third year medical school	GS-7-1 (minus 3 steps).
	Third year postgraduate predoctoral	GS-9-1 (minus 3 steps).
	Fourth year medical school	GS-9-1 (minus 3 steps).
	Fourth year postgraduate predoctoral	GS-10-1 (minus 3 steps).
	Medical or dental internship	GS-10-1 (minus 3 steps).
	Fifth year postgraduate w/o doctorate	GS-11-1 (minus 3 steps).
	First year postgraduate (Ph. D.)	GS-11-1 (minus 3 steps).
	First year medical or dental residency	GS-11-1 (minus 3 steps).
	Second year postdoctoral (Ph. D.)	GS-12-1 (minus 3 steps).
	Second year medical or dental residency	GS-12-1 (minus 3 steps).
	Third year medical or dental residency	GS-12-4 (minus 3 steps).
	Fourth year medical or dental residency	GS-13-1 (minus 3 steps).
	Fifth year medical residency	GS-14-1 (minus 3 steps).

e maximum money amount in each case is derived by subtracting from the statutory salary for the appropriate grade a
quivalent to three step increments of that grade. This amount includes overtime pay, maintenance allowances, and other
ents in money or kind.

) An agency may pay a student-
ployee a stipend in excess of the
ount prescribed under paragraph
of this section only if the Office of
sonnel Management has deter-
ed that a higher maximum stipend
arranted for the student-employee.
) Maximum stipends for positions
he Public Health Service in which
requires intimate contact with
ons afflicted with leprosy are in-
sed above the rates prescribed in
graph (a) of this section to the
e extent that additional pay is pro-
d by Public Health Service Regu-
ons (42 CFR 22.1) for employees
ect to the General Schedule (Part
of this chapter).
) Overtime pay, maintenance al-
nces, and other payments in
ey or kind for a student-employee
t be considered as part of the stu-
-employee's stipend for the pur-
s of this section, and therefore,
not be used to cause the stipend
ceed the maximum stipend estab-
d under this section.
A trainee at a non-Federal hospi-
linic, or medical or dental labora-
who is assigned to a Federal hos-
, clinic, or medical or dental labo-
y as an affiliate for a part of his
r training may not receive a sti-
from the Federal agency other
than any maintenance allowance that is provided.

§ 534.204 Previous authorizations.

The provisions of this subpart do not terminate any authorization approved by the Civil Service Commission or the Office of Personnel Management before February 15, 1979, and such authorizations remain in effect until modified or terminated by an agency or the Office of Personnel Management in accordance with the provisions of this subpart.

Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

§ 534.301 Approval of agency pay determinations and adjustments.

Each rate of pay fixed for a scientific or professional position requiring specially qualified personnel under section 5361 of title 5, United States Code, or a similar statute, is subject to the prior approval of OPM. The prior approval of OPM is required for both original and subsequent appointments to these positions, and for the pay adjustment for an incumbent of such a position. When the agency requests the approval of OPM for a rate of pay or a pay adjustment, it shall submit adequate supporting information.

[33 FR 12456, Sept. 4, 1968]

Subpart D—Pay and Performance Awards Under the Senior Executive Service

SOURCE: 54 FR 2987, Jan. 23, 1989, unless otherwise noted.

§ 534.401 Definitions and setting individual basic pay.

(a) *Definitions.* In this subpart—

Agency means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

ES rate means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the Senior Executive Service.

Senior executive means a member of the Senior Executive Service (SES).

(b) *Setting pay upon initial appointment.* An appointing authority may set the pay of a new appointee into the SES at any ES rate.

(c) *Adjusting pay while in the SES.* (1) The pay of a senior executive may not be adjusted by an agency more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service if the new ES rate is different from the executive's former rate or if the break in service exceeds 12 months.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of an adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. A career senior executive must be provided a 15-day written notice before a pay reduction.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate. If the pay is set at the same rate the executive had in his or her former agency, the action is not considered a pay adjustment for purposes of paragraph (c) of this section.

(e) *Setting pay following a break in SES service.* (1) General.

(i) An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES if:

(A) There has been a break in SES service of more than 30 days;

(B) There has been a break in SES service of 30 days or less, but the executive's last ES pay adjustment was more than 12 months earlier; or

(C) The reappointment is in a different agency.

(ii) Otherwise, pay must be set at the executive's former ES rate and may not be adjusted until 12 months from the last SES pay adjustment, in accordance with paragraph (c) of this section.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. If a former career senior executive elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES only if 12 months have elapsed since the last SES pay adjustment, in accordance with paragraph (c) of this section. If the former senior executive did not elect to remain subject to the SES pay provisions while serving under the Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing the pay of senior executives who converted under Subpart C of Part 317 of this chapter.* The ES rate of a senior executive who entered the SES under the conversion provisions of Subpart C of Part 317 of this chapter cannot be reduced, during such executive's appointment in the SES, below the basic payable salary for that individual immediately before converting to the SES.

§ 534.402 Aggregate compensation.

(a) *Definition.* "Aggregate compensation" consists of basic pay, performance awards, Presidential rank awards,

nd physicians comparability allow-
nces.

(b) *Limitation on aggregate compen-*
tion. No senior executive may re-
ive in any fiscal year aggregate com-
ensation that will exceed the payable
te in effect for Level I of the Execu-
ve Schedule as of the end of the
cal year.

(c) *Payment of amount exceeding*
nitation on aggregate compensation.
Any excess amount that cannot be
id to a senior executive during a
cal year because of the limitation
der paragraph (b) of this section
l be paid to that individual in a
np sum at the beginning of the fol-
ving fiscal year, even if the individ-
l is no longer in the SES. The
ount so paid will then be considered
rt of the aggregate compensation
the new fiscal year.

2) If a senior executive transfers to
different Federal agency or leaves
Federal service, the agency respon-
le for making the payment is the
ency that employed the executive at
time the excess amount was cre-
d.

3) The only exceptions to waiting
il the following fiscal year to make
payment of the excess amount are
ollows:

) If a senior executive dies, pay-
nt of the entire excess amount will
made immediately as part of the
lement of accounts, in accordance
h 5 U.S.C. 5582.

i) If a senior executive separates
n the Federal service, payment will
made following a 30-day break in
ice. The executive shall be paid
excess amount that would not
g aggregate compensation for the
al year above the Level I salary
anticipated to be in effect on the
day of the fiscal year. Any addi-
al excess amount shall be paid at
beginning of the next fiscal year.
he executive is reemployed in the
eral service during the same fiscal
as separation, any previous pay-
t of an excess amount shall be
idered part of that year's aggre-
compensation for applying the
l I limitation for the remainder of
fiscal year.

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the appointee's most recent performance rating of record under part 430, subpart C, of this chapter must have been "Fully Successful" or higher.

(2) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on performance appraisals of career appointees because there exists an insufficient number of career appointees.

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Fifteen percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their distribution of performance awards, the total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM no later than 14 days after the date the performance awards are approved by the agency. If OPM determines that an agency's payments do not meet the requirements of law or regulations, the agency shall take any corrective action directed by OPM.

(f) Performance awards shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on combined basic pay, performance awards, rank stipends, and physicians comparability allowances during a fiscal year. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following fiscal year in accordance with 5 U.S.C. 5383(b).

[52 FR 2, Jan. 2, 1987, as amended at 55 FR 1353, Jan. 16, 1990]

§ 534.404 Pay computation for members of the Senior Executive Service.

(a) Except as provided in paragraph (b), pay for members of the senior executive service shall be computed in accordance with 5 U.S.C. 5504(b).

(b) From the first day of the first pay period beginning on or after January 1, 1984, to derive an hourly rate divide the annual rate by 2,087.

[49 FR 28389, July 12, 1984]

PART 536—GRADE AND PAY RETENTION

Subpart A—Definitions, Coverage and Applicability

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536.101 General.
536.102 Definitions.
536.103 Coverage and applicability of grade retention.
536.104 Coverage and applicability of pay retention.
536.105 Exclusions.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

536.201 Comparison of grades in different pay schedules or pay systems.
536.202 Period of grade retention.
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536.206 Criteria for a "reasonable offer."
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Subpart C—Miscellaneous Provisions

536.301 Placement and classification plans.
536.302 Appeal of termination of benefits because of reasonable offer.
536.303 Documentation.
536.304 Issuance of employee letters.
536.305 Effect of grade retention on quota spaces.
635.306 [Reserved]
536.307 Availability of information.

AUTHORITY: 5 U.S.C. 5361-5366; section 536.307 is also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted.

Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Pub. L. 95-454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361-5366, and section 801(b) of Pub. L. 95-454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

Demotion at an employee's request means a reduction in grade:

(1) Which is initiated by the employ-
ee for his or her benefit, convenience
or personal advantage, including con-
ent to a demotion in lieu of one for
ersonal cause, and

(2) Which is not caused or influ-
nced by a management action.

Demotion for personal cause means
reduction in grade based on the con-
luct, character, or unacceptable per-
ormance of an employee.

Employee means an employee as de-
ined in 5 U.S.C. 5361 and also an indi-
idual who is moved from a position
hich is not under a covered pay
chedule to a position which is under a
overed pay schedule provided that
he individual's employment immedi-
tely prior to the move was on other
han a temporary or term basis.

*Employment on a temporary or term
asis* means employment under an ap-
ointment having a definite time limi-
tion or designated as temporary or
rm.

Rate of basic pay means, for any pay
stem, the rate of pay fixed by law or
dministrative action for the position
eld by an employee before any de-
uctions and exclusive of additional
y or any kind such as night or envi-
nmental differentials in the case of
prevailing rate employee.

Rate schedule means a specific set of
tes within a pay schedule.

Reorganization means the planned
imination, addition or redistribution
functions or duties either wholly
thin an agency or between agencies.

Representative rate means:

(1) The fourth rate of the grade in
e case of a position under the Gen-
al Schedule including the fourth
te of the corresponding grade of the
eneral Schedule in the case of a posi-
on under the Performance Manage-
ent and Recognition System estab-
hed by chapter 54 of title 5, United
ates Code, the single rate of GS-18;
the individual's rate under the
nior Executive Service;

2) The second rate of the grade of a
sition under a regular prevailing
e schedule established under sub-
apter IV of chapter 53 of title 5,
ited States Code, or in the case of a
sition with a single rate, the single
e of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this definition.

Temporary promotion means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that promotion.

Temporary reassignment means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 11795, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985]

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c) (1) An employee who, immediately prior to being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of at least 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she, immediately prior to being placed in the lower grade, has served in a position in any pay schedule for 52 consecutive weeks or more provided that the service was in an agency as defined in 5 U.S.C. 5102 at a grade(s) higher than the position in which the employee is placed.

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

(1) As the result of the expiration of the 2-year period of grade retention; or

(2) As a result of reduction-in-force or reclassification when the employee does not meet the eligibility requirement for grade retention; or

(3) As a result of a reduction or elimination of scheduled rates, special schedules, or special rates, but not as a result of—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under section 5305(c) of title 5, United States Code; or

(ii) A statutory reduction in a prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and Part 532 of this chapter.

(4) As a result of the placement of an employee into a non-special rate position or into a lower special rate position from a special rate position; or

(5) As a result of the placement of an employee in a position in a lower wage area or in a position in a different pay schedule; or

(6) As a result of the placement of the employee in a formal employee development program generally utilized Governmentwide: Upward Mobility, Apprenticeship, and Career Intern Programs.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may provide pay retention to eligible employees whose rates of basic pay would otherwise be reduced as the result of a management action.

[45 FR 85656, Dec. 30, 1980, as amended at 51 FR 12684, Apr. 15, 1986; 53 FR 49545, Dec. 8, 1988; 54 FR 51009, Dec. 12, 1989]

§ 536.105 Exclusions.

(a) Grade and pay retention shall not apply to an employee who—

(1) Moves from a position that is not in an agency as defined in 5 U.S.C. 5102;

(2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;

(3) Is reduced in grade or pay for personal cause or at the employee's request;

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position; or

(5) Is entitled to receive basic pay under 5 U.S.C. 3594(c) because of removal from the Senior Executive Service and placement in a civil service position (other than a Senior Executive Service position) under 5 U.S.C. 3594(b)(2).

(b) An employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment.

(c) Grade retention under § 536.103 (a)(1) or (b) shall not apply to a member of the Senior Executive Service who is placed in a position in a covered pay schedule.

[45 FR 85656, Dec. 30, 1980, as amended at 54 FR 18880, May 3, 1989]

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

536.201 Comparison of grades in different pay schedules or pay systems.

For the purpose of determining whether the grade of a position is equal to, higher than, or lower than he grade of another position in movements between pay schedules or pay ystems, the representative rates of he positions will be compared.

536.202 Period of grade retention.

(a) An employee entitled to grade reention is entitled to retain that grade or 2 years beginning on the date the mployee is placed in the lower graded osition.

(b) If, during a 2-year period of rade retention, an employee is furher reduced in grade under circumtances also entitling the employee to rade retention, the employee shall ontinue to retain the previous reained grade for the remainder of the revious 2-year retention period. At he end of that period, the employee hall be entitled to retain the grade of he position from which the further eduction in grade was made, until 2 ears have passed from the date of the urther reduction in grade.

536.203 Determination of retained grade.

(a) An employee who is in a position nder a covered pay schedule immeditely prior to the action which gives ntitlement to grade retention shall etain the grade held immediately rior to the action.

(b) An employee who is in a position ot under a covered pay schedule imediatley prior to the action which ives entitlement to grade retention hall retain:

(1) The lowest grade of the covered ay schedule in which placed which has a representative rate equal to or higher than the representative rate of the grade held immediately prior to that placement; or

(2) The highest grade of the covered pay schedule in which placed, if there is no grade in the covered pay schedule with a representative rate equal to or higher than the representative rate held immediately prior to that placement.

§ 536.204 Determination of applicable rate schedule.

(a) When an employee entitled to grade retention is placed in a position in a different geographical area, the rate schedule which applies to the employee is the rate schedule in the new geographical area.

(b) When an employee entitled to grade retention is placed in a position in, or his or her position is changed to, a different occupational series, the rate schedule which applies to the individual is the rate schedule for the new occupational series.

§ 536.205 Determination of rate of basic pay.

(a) When an employee becomes entitled to grade retention, or moves to another position during a period of grade retention under conditions which permit continuation of the grade retention entitlement, the employee is entitled to the greatest of:

(1) His or her rate of basic pay before the movement, or

(2) The rate of basic pay from the applicable rate schedule for the grade and step (or relative position within a range of rates under the merit pay system) held by the employee before the movement, or

(3) The lowest rate of basic pay from the applicable rate schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(b) (1) When an employee becomes entitled to pay retention, or moves to another position while receiving pay retention, the employee's rate of basic pay immediately prior to eligibility or movement shall be compared with the range of rates of basic pay for the position to be occupied by the employee upon this eligibility or movement.

(2) The employee is entitled to the lowest rate of basic pay in the position to be occupied upon the eligibility or movement which equals or exceeds his or her rate of basic pay immediately prior to the eligibility or movement. If the rate of basic pay can be accommodated in the rate range of the latter position, pay retention does not apply.

(3) If the employee's rate of basic pay immediately prior to the pay retention exceeds the maximum rate of the position to be occupied when he or she becomes entitled to pay retention, the employee is entitled to the lower of:

(i) The rate of basic pay payable to the employee immediately before the reduction in pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the new grade.

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position.

(d) When, as a result of an increase in the scheduled rate(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the maximum rate of that grade and pay retention ceases.

(e) An employee who is serving on a temporary promotion at the time he or she becomes eligible for pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.

(f) When an employee's entitlement to grade or pay retention terminates, the employee's rate of basic pay shall be set in accordance with the provisions of Parts 531 and 532 of this title unless:

(1) Grade retention is being terminated as a result of the expiration of the 2-year retention period; or

(2) The employee is moved to a grade equal to or greater than the retained grade; or

(3) The employee is entitled to a higher rate of basic pay under paragraph (b) or (d) of this section.

§ 536.206 Criteria for a "reasonable offer".

For the purposes of this part, an offer of a position, in order to be considered a reasonable one, must fulfill the following conditions:

(1) The offer must be in writing, and must include an official position description of the offered position; and

(2) The offer must inform the employee that an entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in § 536.302; and

(3) The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement; and

(4) The offered position must be in an agency, as defined in 5 U.S.C. 5102, although not necessarily in the same agency in which the employee is serving at the time of the offer; and

(5) The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than that of the position held before the change; and

(6) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of entitlement under § 536.103(a) of this part ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade action, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in ervice of 1 workday or more; or

(2) The employee is demoted for per- onal cause or at the employee's re- uest; or

(3) The employee is placed in, or de- lines a reasonable offer of, a position he grade of which is equal to or igher than the retained grade; or

(4) The employee elects in writing to erminate the benefits of grade reten- on.

(b) Eligibility for grade retention as result of entitlement under 536.103(b) of this part ceases if any the following conditions occurs at y time after the employee is in- rmed by management of an impend- g reorganization or reclassification hich will or could result in reduction grade but before the commence- ent of the 2-year period of grade re- ntion:

(1) Any of the conditions listed in aragraph (a) of this section except at an employee's request for place- ent in a lower graded position, in eu of displacing an employee at his her grade under reduction-in-force ocedures, is not a declination of a asonable offer for grade retention rposes; or

(2) The employee fails to enroll in, to comply with reasonable written quirements established to assure full nsideration under, a program pro- ding priority consideration for place- ent.

36.208 Termination of grade retention.

(a) Grade retention terminates if y of the conditions listed in 36.207(a) occurs after commence- ent of the 2-year period of grade re- ntion.

(b) Grade retention as provided by 36.103(b) also terminates if any of e conditions listed in § 536.207(b) cur after the commencement of the ear period of grade retention.

c) The effective date of termination grade retention benefits is:

1) The day before placement if the mination is the result of the em- oyee's placement in another posi- n; or

2) At the end of the last day of the period which the employee:

i) Declines a reasonable offer; or

(ii) Elects to waive grade retention benefits; or

(iii) Fails to enroll in, or comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

§ 536.209 Loss of eligibility for, or termination of, pay retention.

(a) Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee had received written notification that his or her pay is to be reduced:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or

(3) The employee is demoted for personal cause or at the employee's request.

(b) The effective date of termination of pay retention benefits is:

(1) The day before placement if the termination is the result of the employee's placement in another position; or

(2) The end of the last day of the pay period in which the employee declines a reasonable offer.

Subpart C—Miscellaneous Provisions

§ 536.301 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management problems; and

(3) Carry out specific planned efforts to place employees subject to this part; and

(4) Pursue placement efforts that do not adversely affect affirmative action goals.

§ 536.302 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade of pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 428, Jan. 4, 1985; 50 FR 45389, Oct. 31, 1985]

§ 536.303 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in § 536.304.

§ 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

§ 536.305 Effect of grade retention on quota spaces.

To determine the number of positions at GS-16, -17 and -18, or the equivalent, including positions in the Senior Executive Service, authorized by an Act of Congress, the grades (or SES levels) of the positions occupied, rather than the retained grades, are to be used.

§ 536.306 [Reserved]

§ 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the infor-

mation is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., itle, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified nformation from the file.

(b) The Office will disclose to the arties concerned, the information ontained in an appeal file in proceedngs under this part, except when the lisclosure would violate the proscripion against the disclosure of medical nformation in §297.204(c) of this hapter. For the purposes of this secion, "the parties concerned" means he Government employee or former Government employee involved in the roceedings, his or her representative esignated in writing, and the repreentative of the agency or the Office nvolved in the proceeding.

0 FR 3313, Jan. 24, 1985, as amended at 54 R 18879, May 3, 1989]

ART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

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AUTHORITY: 5 U.S.C. Chapters 43 and 54.

SOURCE: 50 FR 35499, Aug. 30, 1985, unless herwise noted.

540.101 General.

Chapter 54 of title 5, United States de (5 U.S.C. 5401 through 5410), ovides for a Performance Management and Recognition System (PMRS) to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S.C. 7103(a) (10) and (11)) in positions classified in GS-13, 14, or 15. This part contains the regulations which the Office of Personnel Management (OPM) has prescribed for the Performance Management and Recognition System, and supplements the provisions of 5 U.S.C. 4302a, and 5401 through 5410.

§ 540.102 Definitions.

In this part:

Agency has the meaning given it in 5 U.S.C. 5102, but does not include the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

Employee means a supervisor or management official as defined in 5 U.S.C. 7103(a) (10) and (11) in positions classified in grades GS-13, GS-14 and GS-15.

First reference rate means the sum of the minimum rate of the grade and one-third of the difference between the maximum and the minimum rate for that grade. In the General Schedule, the first reference rate equals the dollar amount of the fourth step of a General Schedule grade, or in the case of a special rate range established under 5 U.S.C. 5303 and Part 530 of this chapter, the fourth step of such special rate range.

General pay increase means that portion of the pay adjustment under 5 U.S.C. 5305 (or for special salary rate employees, any adjustment under 5 U.S.C. 5303) granted to PMRS employees based on performance.

Merit increase means the increase in basic pay for a PMRS employee granted under 5 U.S.C. 5404 which is equivalent to one-ninth of the difference between the maximum rate of the grade or special rate range and the minimum rate of the grade or special rate range.

Pay adjustment period means the period beginning on the first day of the first day period applicable to the employee starting on or after the first day of the month in which an adjustment would take effect under 5 U.S.C.

5303 or 5 U.S.C. 5305 and ending at the close of the day preceding the beginning of the following pay adjustment period.

Performance award means a performance-based cash payment to a PMRS employee made under 5 U.S.C. 5406. A performance award does not increase base pay.

Performance award budget means the amount of money allocated by an agency for distribution as performance awards to covered employees.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

Performance pay decision means the determination of the total amount of the general pay increase, merit increase, and performance award to be granted to an employee made by the officials also responsible for making the performance appraisal decisions, in accordance with OPM instructions.

Rating (See Summary Rating)

Rating of record means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances, including the written notice at any time that an employee's performance is unacceptable on one or more critical elements.

Second reference rate means the sum of the minimum rate of the grade and two-thirds of the difference between the maximum and the minimum rate for that grade. In the General Schedule, the second reference rate equals the dollar amount of the seventh step of a General schedule grade, or in the case of a special rate range established under 5 U.S.C. 5303 and part 530 of this chapter, the seventh step of such special rate range.

Summary Rating means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.405(h) of this chapter).

[50 FR 35499, Aug. 30, 1985; 50 FR 40179, Oct. 1, 1985; 54 FR 49077, Nov. 29, 1989]

§ 540.103 Ranges of basic pay and employee coverage.

(a)(1) The range of annual rates of basic pay for each grade of the Performance Management and Recognition System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule, or of a special salary rate range established under 5 U.S.C. 5303, except that an employee may be paid less than the minimum rate of basic pay of the grade or special rate range of the employee's position to the extent that payment of the lesser amount is the result of a performance evaluation of less than "Fully Successful."

(2) No PMRS employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the range of basic pay applicable to the employee's position as specified in paragraph (a)(1) of this section, except in connection with retained pay, as provided in 5 U.S.C. 5363.

(b)(1) In accordance with the definitions in 5 U.S.C. 7103(a)(10) and (11), the head of each agency shall identify employees who are supervisors or management officials for purposes of coverage under the Performance Management and Recognition System.

(2) Employees who were appointed on the effective date of a pay adjustment under 5 U.S.C. 5303 or 5 U.S.C. 5305, and whose pay was set in accordance with the newly adjusted pay range for their grade, are not to be considered covered by the Performance Management and Recognition System on that day for the purposes of granting general pay increases, merit increases or performance awards under sections 5403, 5404, or 5406 of title 5, United States Code.

(c)(1) The head of an agency may request that the President exclude an agency, any unit of an agency, or any class of employees within any such unit from the PMRS. Such request must be filed with the Director, Office of Personnel Management, in writing, and must set forth the reasons why the agency, unit or class should be excluded.

(2) The head of an agency may request that OPM exclude an employee from the PMRS. Such request must be filed with the Office of Personnel Management in writing, and must set forth the reasons why the employee should be excluded.

§ 540.104 Performance Management and Recognition System performance ratings.

(a)(1) Except as provided in § 540.103(a)(2) of this part, each performance pay decision shall be based on the employee's rating of record for the current appraisal period for which performance pay decisions are being made under a performance appraisal system as defined in Part 430 of this chapter, approved by the Office of Personnel Management under 5 U.S.C. 4302a, or an equivalent performance appraisal system. If the agency determines it is appropriate to do so, performance pay decisions may also take into consideration the accomplishments of the employee's organization.

(2) All parts of a performance pay decision (i.e., general increase, merit increase, and performance award) must be based on the same rating of record.

(3) If an employee cannot be given a rating of record under 5 U.S.C. 4302a:

(i) The general increase will be determined in accordance with § 540.106(d); and

(ii) The merit increase and, as appropriate, the performance award will be determined in accordance with the procedure specified in § 540.108(a)(2).

(4) Notwithstanding the definition of rating of record in § 540.102 of this part, when a summary rating is transferred with an employee as required under § 430.407(g) of this part, and the new agency or organization cannot give the employee a rating of record as required in the Performance Management Plan, the transferred summary rating will be considered the employee's rating of record for the current appraisal period only for the purpose of making performance pay decisions.

(b)(1) The performance appraisal period on which the performance pay decision is based should be as close to the pay adjustment period as the agency deems practicable, but will not end earlier than June 30 not later than September 30 of the same year, or such other dates prescribed by OPM.

(2) In accordance with § 540.108(a) of this part, agencies are allowed to extend the performance appraisal period to no later than September 30. Such extension will be considered to be part of the current appraisal period for which performance pay decisions are being made. Agencies determining to extend the appraisal period must specify the length of such extension in the Performance Management Plan required under § 540.111 of this part.

(c) Each agency shall establish procedures to manage the performance appraisal process for employees covered by the Performance Management and Recognition System, such as reviews of standards and ratings for difficulty and strictness of application, to obtain performance pay amounts that are equitable both in the value of the award to the employee and in the relationship of award between levels.

(d) Agencies and employees subject to the Performance Management and Recognition System, but not covered by chapter 43 of title 5, U.S.C., shall meet minimal performance appraisal requirements issued by OPM. Performance appraisal systems established under this paragraph shall, for purposes of this subpart, be equivalent to performance appraisal systems established under 5 U.S.C. 4302a.

§ 540.105 Performance recognition.

(a) Each agency shall establish a procedure for determining the manner by which general increases, merit increases and performance awards shall be granted to PMRS employees, in accordance with instructions provided by OPM.

(b) Agency procedures for making performance pay decisions must include a requirement for an approval of each decision by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) which responsibility for managing the performance award budget within the agency.

§ 540.106 General pay increases.

(a) General pay increases are to be made effective on the first day of the pay adjustment period.

(b) Except for paragraph (d) of this section, each general pay increase must be based on a rating of record for the current appraisal period for which performance pay decisions are being made. The following table prescribes the portion of the general pay increase employees must receive for each performance level, as defined in § 430.405(h) of this chapter.

GENERAL PAY INCREASES FOR EACH PERFORMANCE RATING LEVEL

If an employee's performance is rated at—	Then the employee receives—
Level 5, 4, or 3	The full general pay increase for the pay adjustment period.
Level 2	One-half the general pay increase for the pay adjustment period.
Level 1	No general pay increase for the pay adjustment period.

(c)(1) To determine the amount of the employee's general pay increase, the agency must use the employee's rate of basic pay on the day immediately preceding the pay adjustment period.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, the agency will determine the general pay increase for employees at performance level 3 (Fully Successful) or above as follows:

(A) Subtract the minimum rate of the rate range of the employee's position in effect on the day immediately preceding the pay adjustment period from the employee's rate of basic pay as determined under paragraph (c)(1) of this section;

(B) Subtract the minimum rate of the range in effect immediately preceding the pay adjustment period from the maximum of that rate range;

(C) Divide the result of paragraph (c)(2)(i)(A) by the result of paragraph (c)(2)(i)(B);

(D) Subtract the minimum rate of the new rate range for the grade from the maximum rate of that range;

(E) Multiply the result of paragraph (c)(2)(i)(C) by the result of paragraph (c)(2)(i)(D); and

(F) Add the result of paragraph (c)(2)(i)(E) to the minimum of the new rate range and round to the next higher whole dollar amount.

(ii) The salary of an employee which is at the minimum or maximum of the rate range in effect on the day immediately preceding the pay adjustment period will be adjusted to the minimum or maximum of the new rate range respectively.

(3) An employee whose performance is rated at level 1 or 2 and, therefore, receives less than the full general increase may be paid less than the minimum rate of the rate range for the employee's position.

(4)(i) Except as provided in paragraph (c)(4)(iii) of this section, the salary of an employee whose performance is rated at level 2, including an employee whose rate of basic pay is less than the minimum rate of the rate range for the employee's position, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by one-half of the amount of the general increase applicable to the rate range for the grade of the employee's position for such pay adjustment period.

(ii) The salary of an employee whose rate of basic pay is less than the minimum rate of the rate range of the employee's position, and whose performance is rated at level 3 or above, will be adjusted by multiplying the employee's rate of basic pay on the day immediately preceding the pay adjustment period by the full amount of the general increase applicable to the rate range of the grade of the employee's position for such pay adjustment period.

(iii) An employee who is receiving retained pay will receive one-half of the general increase, as required under 5 U.S.C. 5363(a), regardless of his or her summary rating level.

(d) Agencies will increase the salary of employees who cannot be rated under a performance appraisal system established under 5 U.S.C. 4302a by the amount of the full general pay increase.

§ 540.107 Merit increases.

(a)(1) Merit increases under 5 U.S.C. 5404 are to be effective on the first day of the first applicable pay period commencing on or after October 1 of each year. Merit increases may be paid retroactively but must be received by the employee no later than December 31 of the applicable year.

(2) An employee is eligible to receive a merit increase if he/she is in a Performance Management and Recognition System position on the effective date of the merit increase.

(b) PMRS employees whose performance is rated at level 3 (Fully Successful), or levels 4 or 5 above the "Fully Successful" level, as defined in § 430.405(h) of this chapter, shall receive merit increases in accordance with the following table.

MERIT INCREASES FOR EACH PERFORMANCE RATING LEVEL

Performance rating	Amount received if rate of basic pay does not equal or exceed the first reference rate	Amount received if rate of basic pay equals or exceeds the first reference rate but does not equal or exceed the second reference rate	Amount received if rate of basic pay equals or exceeds the second reference rate
Level 5	1 merit increase	1 merit increase	1 merit increase.
Level 4	1 merit increase	½ merit increase	½ merit increase.
Level 3 (fully successful)	1 merit increase	½ merit increase	⅓ merit increase.

(c) PMRS employees whose performance is rated at level 1 or 2 will receive a zero merit increase.

(d) An employee newly appointed to the Government within 90 days of the effective date (including the effective date) of the merit increase shall not be eligible for a merit increase. For the purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(e) An employee who moves into the PMRS within 90 days of the effective date of the merit increase and who receives an increase to base pay (promotion, within-grade increase, quality step increase) within 90 days of the effective date of the merit increase, will not receive a merit increase for that fiscal year. Movements into the PMRS and increases occurring on the effective date of the merit increase are considered to be within this 90-day period. Actions covered by this rule include:

(1) Conversion to the PMRS;

(2) Reassignment to the PMRS from another Federal pay system;

(3) Promotion to the PMRS;

(4) Temporary promotion to the PMRS.

(f) When an employee's performance cannot be appraised for the agency's minimum appraisal period, merit increases will be granted in accordance with the provisions of § 540.108(a), (b), (c) or (d) of this part.

[50 FR 35499, Aug. 30, 1985; 50 FR 40179, Oct. 1, 1985; 54 FR 49078, Nov. 29, 1989]

§ 540.108 Special provisions for pay administration.

(a)(1) This paragraph applies when an employee cannot be rated for the current appraisal period under elements and standards established under 5 U.S.C. 4302a, under the following circumstances:

(i) An employee who is not under elements and standards, established under 5 U.S.C. 4302a, for the agency's minimum appraisal period, except as provided in § 540.107(d) and (e) of this part; or

(ii) An employee who is unable to be rated because the supervisor has left the agency, and higher level supervisors cannot reasonably appraise the performance of the employee; or

(iii) An employee who is on long-term training or IPA assignment under sections 3371 through 3376 of title 5, United States Code.

(2) Under these circumstances, a merit increase shall be granted using one of the following rules in the order specified:

(i) The employee's rating period may be extended as provided in § 540.104(b)(2), such extension not to exceed September 30 of the same year;

(ii) The employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(iii) The employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(b) Except as provided in paragraphs (c) and (d) of this section, when an employee who cannot be rated returns to a pay status after an approved absence that would be creditable service under 5 CFR 531.406, which included one or more pay adjustments provided under 5 U.S.C. 5403 and 5404, the employee's rate of basic pay shall be set at the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her employment with the agency; and, as appropriate,

(2) The general pay increases that would have been required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(3) The merit increases received by an employee rated at level 3 ("Fully Successful").

(c)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Service in the armed forces or non-Government service referenced in 5 U.S.C. 5405(d);

(ii) Return to a pay status after an IPA assignment under sections 3371 through 3376 of title 5, United States Code;

(iii) Other service for which an employee's advancement through the pay range is preserved by statute; or

(iv) One or more merit increases that occurred during a period for which the employee has received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter.

(2) Under these circumstances, the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the interruption of his or her duty status, and, as appropriate;

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee's service had not been interrupted; and

(iii) Merit increases, which will be granted as follows:

(A)(1) For the first merit increase during the period of such service, the employee's rating of record under 5 U.S.C. 4302a is extended and the appropriate increase is granted, if that rating was given no earlier than the previous agency rating period; or

(2) If there is no rating of record that can be extended, the employee receives an increase equivalent to that granted for a level 3 ("Fully Successful") rating.

(B) For all subsequent merit increases, the employee will receive the increase equivalent to that received for a level 3 ("Fully Successful") rating for the period involved.

(d)(1) This paragraph applies when the employee's rate of basic pay is being set because of—

(i) Leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase.

(2) Under these circumstances the employee's pay shall be set at the sum of—

(i) The employee's rate of basic pay immediately before the effective date of the LWOP; and, as appropriate,

(ii) The general increases that would be required by 5 U.S.C. 5403 for a level 3 ("Fully Successful") rating, if the employee had not been on LWOP.

(3) Under these circumstances, no merit increase will be granted for the

current appraisal period for which merit increases are being granted.

(e) Notwithstanding § 531.203(f) of this chapter, when an employee is promoted within or out of the PMRS on the effective date of the general increase *and* the merit increase, the employee shall receive the following, in the order specified:

(1) Any general increase to which the employee otherwise would be entitled;

(2) Any merit increase to which the employee otherwise would be entitled; and

(3) The increase resulting from the promotion.

§ 540.109 Performance awards.

(a) Section 5406 of title 5, United States Code authorizes the payment of performance awards as part of the Performance Management and Recognition System.

(b)(1) Each agency covered by the Performance Management and Recognition System shall, at the beginning of each fiscal year, determine the amount of money available for performance awards for that fiscal year in accordance with the requirements of 5 U.S.C. 5406(c) and instructions provided by OPM. Except as provided in paragraph (b)(3) of this section, the following funding requirements apply:

(i) Each agency is required to pay a minimum of 1.05 percent of the estimated aggregate amount of PMRS employees' basic pay for Fiscal Year 1988 for performance awards;

(ii) In accordance with chapter 54 of title 5 United States Code, the minimum percentage to be spent for performance awards will be 1.15 percent for Fiscal Year 1989.

(iii) An agency may not spend more for performance awards than 1.5 percent of the estimated aggregate amount of PMRS employees' basic pay for any fiscal year.

(2) In determining the estimated aggregate amount of PMRS employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered by the PMRS during the previous year (or the Merit Pay System in FY 84);

(ii) The aggregate rates of basic pay for such employees;

(iii) Significant changes in the number of PMRS employees expected in the current fiscal year, such as by attrition, reorganization, expansion, or reduction in force; and

(iv) The distribution of performance ratings in the agency;

(v) The amount of the general increases and merit increases that will be paid to PMRS employees in the current fiscal year.

(3) Agencies having 20 or fewer employees covered by the PMRS and that have determined that the funding allowed under 5 U.S.C. 5406(c)(2)(A) is insufficient to provide an effective performance awards distribution, may submit to OPM, at the beginning of each fiscal year, a request for approval of a higher level of funding for performance awards, but not to exceed 10 percent of the aggregate amount of basic pay for PMRS employees in that fiscal year as provided in 5 U.S.C. 5406(c)(2)(B). The request shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a minimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Award amounts that would be payable under paragraph (b)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(c)(1) Performance awards shall be paid at least annually in accordance with 5 U.S.C. 5406(c)(2) and OPM instructions, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the performance appraisal period as the agency deems practicable. This does not preclude agencies from granting cash awards under 5 U.S.C. 5407 and § 540.110 of this part at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a Performance Management and Recognition System position on the last day

of the current performance appraisal period for which performance pay decisions are being made.

(d)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance pay decisions are being made. An employee with a rating at level 5 must receive a performance award of at least 2 percent of base pay (except that no minimum shall be applicable in FY 85), but not more than 10 percent of base pay in any given year. Based upon an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a summary rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees rated at level 5.

(3) An employee with a summary rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance award budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(e) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(f)(1) In granting performance awards as provided in paragraph (d) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan. However, any employee receiving a rating of "Outstanding" must receive an award of no less than 2 percent of base pay (except that no minimum shall be applicable in FY 85).

(2) Performance awards that have been adjusted because of recent promotions will not be considered in meeting the requirements of paragraph (d) of this section.

(g) The agency head will determine whether an employee who cannot be given a rating of record under 5 U.S.C. 4302a will be granted a performance award. If a determination is made to grant a performance award, the amount of such award will be determined in accordance with the procedure specified in § 540.108(a)(2), and the agency's Performance Management Plan.

(h) An employee newly appointed to the Government, as specified in § 540.107(d), within 90 days of the effective date (including the effective date) of the merit increase shall not be eligible for a performance award.

(i)(1) When an employee is—

(i) On leave without pay (LWOP) for a period of time such that the employee is not in a pay status for at least the agency's minimum appraisal period; and

(ii) The employee returns to pay status between either (1) a period which is less than the agency's minimum appraisal period, or (2) after the end of the agency's appraisal period, and the effective date of the merit increase;

(2) The employee will not be granted a performance award.

(j) Failure of an agency to pay a performance award under this section as authorized by 5 U.S.C. 5406(b) may not be appealed.

[50 FR 35499, Aug. 30, 1985, as amended at 50 FR 52897, Dec. 27, 1985; 51 FR 36795, Oct. 16, 1986; 52 FR 46052, Dec. 4, 1987]

§ 540.110 Cash award program.

(a) Title 5, U.S. Code, section 5407 authorizes a cash award program for:

(1) Suggestions, inventions, superior accomplishments, or other unique personal efforts which contribute to the efficiency, economy, or other improvement of Government operations, or

achieve a significant reduction in paperwork; or

(2) The performance of a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) An award for any unique or special act or service under paragraph (a) of this section may be granted for any non-recurring employee or group contribution which is highly exceptional and unusually outstanding and which is beyond normal job responsibilities and performance standards.

(c) In granting cash awards under this section, the agency must prepare a written justification separate from the employee's performance plan or rating.

(d) Cash awards will be granted in accordance with the incentive award program provisions in Part 451 of this chapter, OPM instructions under that chapter, and the agency's incentive award program established under Part 451 of this chapter.

§ 540.111 Agency Performance Management Plans.

(a) Each agency with employees who are subject to the Performance Management and Recognition System shall establish a Performance Management Plan for administering 5 U.S.C. 4302a, 5 U.S.C. 5401 through 5410, and this part. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Appraisal systems required under 5 U.S.C. 4302a.

(2) Performance Management and Recognition System plan(s) required by this part, including the manner by which the distribution of the funds contained in the agency's performance award budget will be made.

(3) Requirements for communication to the agency's PMRS employees of the purpose of the Performance Management and Recognition System and how it works; and

(4) Requirements for training in the operation of the Performance Management and Recognition System for employees who are subject to that System and for Senior Executive Service members and other managers supervising PMRS employees.

(b)(1) Each agency covered by Part 540 of this chapter shall submit a Performance Management Plan to the Office of Personnel Management for review and approval. OPM will provide agencies with a Performance Management Plan Checklist, containing all the components necessary for approval of the PMRS Performance Management Plan.

(2) If major subcomponents of an agency propose to modify any element of the agency's plan that is included in the Performance Management Plan Checklist, or develop separate proposed plans based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval.

(3) Agencies will be required to implement the provisions of an approved Performance Management Plan pertaining to their Performance Management and Recognition System employees not less than 150 days prior to the end of the agency's performance appraisal period.

(c) Agencies shall submit to OPM for approval any changes to their Performance Management Plans that modify any element of the agency's Plan that is included in the Performance Management Plan Checklist.

§ 540.112 Reports.

(a) So that the Office of Personnel Management can provide the Congress and others with information regarding the operation of the Performance Management and Recognition System, including performance awards under 5 U.S.C. 5406 and cash awards under 5 U.S.C. 5407, each agency shall maintain such records and submit to OPM such reports as OPM may require.

(b) Each agency shall report to OPM at the beginning of each fiscal year the estimated performance awards budget, including the funding level used, and such other data required by OPM to administer the Performance Management and Recognition System.

PART 550—PAY ADMINISTRATION (GENERAL)

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SOURCE: 33 FR 12458, Sept. 4, 1968, unless otherwise noted.

Subpart A—Premium Pay

AUTHORITY: 5 U.S.C. 5548 and 6101(c).

GENERAL PROVISIONS

§ 550.101 Coverage and exemptions.

(a) *Employees to whom this subpart applies.* (1) This subpart applies to each employee in or under an Executive agency as defined by section 105 of title 5, United States Code, except those named in paragraph (b) of this section.

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 to 550.164, inclusive) apply also to each employee of the judicial branch, legislative branch, and the government of the District of Columbia who is subject to subchapter V of chapter 55 of title 5, United States Code.

(b) *Employees to whom this subpart does not apply.* This subpart does not apply to:

(1) An elected official;

(2) The head of a department;

(3) [Reserved]

(4) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, except that § 550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;

(5) An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the area in which employed;

(6) An employee of the Tennessee Valley Authority;

(7) An employee of the Central Intelligence Agency (sec. 10, 63 Stat. 212, as amended; 50 U.S.C. 403j);

(8) A seaman to whom section 1(a) of the act of March 24, 1943 (57 Stat. 45; 50 U.S.C. App. 1291(a)) applies;

(9) A member of the United States Park Police or the United States Secret Service Uniformed Division;

(10) An officer or member of the crew of a vessel, whose pay is fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry (30 Comp. Gen. 158);

(11) A civilian keeper of a lighthouse, or a civilian employed on a lightship or another vessel of the Coast Guard (14 U.S.C. 432(f));

(12) A physician, dentist, nurse, or any other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;

(13) A student-employee as defined by section 5351 of title 5, United States Code;

(14) An employee of the Environmental Science Services Administration engaged in the conduct of meteorological investigations in the Arctic region (62 Stat. 286; 15 U.S.C. 327);

(15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(16) A "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20, United States Code;

(17) A Foreign Service officer or a member of the Senior Foreign Service; or

(18) A member of the Senior Executive Service.

(c) *Services to which this subpart does not apply.* This subpart does not apply to overtime, night, or holiday services for which additional pay is provided by the act of:

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving inspectors, storekeepers, weighers, and other customs officers and employees;

(2) July 24, 1919 (41 Stat. 241; 7 U.S.C. 394), involving employees engaged in enforcement of the Meat Inspection Act;

(3) June 17, 1930, as amended (46 Stat. 715, as amended; 19 U.S.C. 1450, 1451, 1452), involving customs officers and employees;

(4) March 2, 1931 (46 Stat. 1467; 8 U.S.C. 1353*a*), involving inspectors and employees, Immigration and Naturalization Service;

(5) May 27, 1936, as amended (49 Stat. 1380, as amended; 46 U.S.C. 382b), involving local inspectors of steam vessels and assistants, U.S. shipping commissioners, deputies, and assistants, and customs officers and employees;

(6) March 23, 1941 (55 Stat. 46; 47 U.S.C. 154(f)(3)), involving certain engineers of the Federal Communications OPM;

(7) June 3, 1944 (58 Stat. 269; 19 U.S.C. 1451a), involving customs officers and employees;

(8) August 4, 1949 (63 Stat. 495; 7 U.S.C. 349a), involving employees of the Bureau of Animal Industry who work at establishments which prepare virus, serum, toxin, and analogous products for use in the treatment of domestic animals; or

(9) August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), involving employees of the Department of Agriculture performing inspection or quarantine services relating to imports into and exports from the United States.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3933, Jan. 28, 1983]

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 to 550.164, inclusive, a legislative or judicial agency and the government of the District of Columbia) shall determine an employee's entitlement to premium pay in accordance with subchapter V of chapter 55 of title 5, United States Code, and this subpart.

§ 550.103 Definitions.

In this subpart:

(a) "Department" means an executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(b) "Agency" means (1) a department as defined in paragraph (a) of this section, (2) the government of the District of Columbia, and (3) a legislative or judicial agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

(c) "Employee" means an employee to whom this subpart applies.

(d) "Head of a department" means the head of a department and, except for the purpose of § 550.101(b)(2), an official who has been delegated authority to act for the head of a department in the matter concerned.

(e) "Nightwork" has the meaning given that term in § 550.121, and includes any nightwork preformed by an employee as part of his or her regularly scheduled administrative workweek.

(f) "Irregular or occasional overtime work" means overtime work that is not part of an employee's regularly scheduled administrative workweek.

(g) "Regular overtime work" means overtime work that is part of an employee's regularly scheduled administrative workweek.

(h) "Overtime work" has the meaning given that term by paragraphs (a) and (d) of § 550.111, and includes irregular or occasional overtime work and regular overtime work.

(i) "Premium pay" means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty or administratively uncontrollable work.

(j) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(l) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of a department under section 6101(a) of title 5, United States Code.

(m) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111 of this chapter.

(n) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(o) "Sunday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday.

(p) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111 of this chapter.

(q) "Holiday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3933, Jan. 28, 1983]

§ 550.105 Maximum limitation.

An employee may be paid premium pay under this subpart only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15.

Overtime Pay

§ 550.111 Authorization of overtime pay.

(a) Except as provided by paragraph (d) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is:

(1) Officially ordered or approved: and

(2) Performed by an employee. Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Except as otherwise provided in this subpart, a department shall pay for overtime work at the rates provided in § 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under § 610.111(b) of this chapter, overtime work means work in excess of 40 hours in an administrative workweek that is:

(1) Officially ordered or approved, and

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS-10 or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

(e) Notwithstanding paragraphs (a) and (d) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic pay exceeds the hourly rate of overtime pay provided by § 550.113, the department shall pay him at his basic rate of pay for each hour of his daily tour of duty within his basic workweek.

[33 FR 12458, Sept. 4, 1968, as amended at 34 FR 19495, Dec. 10, 1969; 48 FR 36805, Aug. 15, 1983]

§ 550.112 Computation of overtime work.

The computation of the amount of overtime work of an employee is subject to the following conditions:

(a) *Time spent in principal activities.* Principal activities are the activities that an employee is employed to perform. They are the activities that an employee performs during his or her regularly scheduled administrative workweek (including regular overtime work) and activities performed by an employee during periods of irregular or occasional overtime work authorized under § 550.111. Overtime work in principal activities shall be credited as follows:

(1) An employee shall be compensated for every minute of regular overtime work.

(2) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

(b) *Time spent in preshift or postshift activities.* A preshift activity is a preparatory activity that an employee performs prior to the commencement of his or her principal activities, and a postshift activity is a concluding activity that an employee performs after the completion of his or her principal activities. Such activities are not principal activities as defined in paragraph (a) of this section.

(1) (i) If the head of a department reasonably determines that a preshift or postshift activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per daily tour of duty, he or she shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(ii) If the time spent in a preshift or postshift activity is compensable as hours of work, the head of the department shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the head of the department. In no case shall the time credited for the performance of an activity exceed the time scheduled by the head of the department. If the time period scheduled by the head of the department for the performance of a pereshift or postshift activity is outside the employee's daily tour of duty, the employee shall be credited with the time spent performing that activity in accordance with paragraph (a)(2) of this section.

(2) A preshift or postshift activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

(c) *Leave with pay.* An employee's absence from duty on authorized leave with pay under subchapter I of chapter 61 of title 5, United States Code, during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on a nonworkday established by Executive or administrative order, and on compensatory time off as provided in § 550.114) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay under subchapter I of chapter 61 of title 5, United States Code, is charged only for an absence that occurs during a basic workweek.

(d) *Leave without pay.* (1) For a period of leave without pay in an employee's basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 40 hours in a workweek.

(2) For a period of leave without pay in an employee's daily tour of duty, an equal period of service performed outside the daily tour, but in the same workday, shall be substituted and paid for at the rate applicable to his daily tour of duty before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 8 hours in a workday.

(e) *Absence during overtime periods.* Except as provided by paragraph (a) of this section, as expressly authorized by statute, or to the extent authorized while the employee is in a travel status, a period is counted as overtime work only when the employee actually performs work during the period or is taking compensatory time off as provided in § 550.114.

(f) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

(g) *Time in travel status.* Time in travel status away from the official duty-station of an employee is deemed employment only when:

(1) It is within his regularly scheduled administrative workweek, including regular overtime work; or

(2) The travel (i) involves the performance of actual work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under such arduous and unusual conditions that the travel is inseparable from work, or (iv) results from an event which could not be scheduled or controlled administratively.

(h) *Call-back overtime work.* Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 18669, Dec. 18, 1968; 48 FR 3934, Jan. 28, 1983; 48 FR 36805, Aug. 15, 1983]

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS-10 the overtime hourly rate is 1½ times his hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS-10 the overtime hourly rate is 1½ times the hourly rate of basic pay at the minimum rate for GS-10.

(c) An employee is paid for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) An employee whose rate of basic pay is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay in accordance with the provisions of section 5544 of title 5, United States Code. The rate of pay for each hour of overtime work of such an employee is computed as follows:

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,080 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,080 and multiply the quotient by one and one-half.

Rates are computed in full cents, counting a fraction of a cent as the next higher cent.

§ 550.114 Compensatory time off for irregular or occasional overtime work.

(a) At the request of an employee, the head of a department may grant him compensatory time off from his tour of duty instead of payment under § 550.113 for an equal amount of irregular or occasional overtime work.

(b) The head of a department may provide that an employee whose rate of basic pay exceeds the maximum rate for GS-10 shall be paid for irregular or occasional overtime work with an equivalent amount of compensatory time off from his tour of duty instead of payment under § 550.113.

(c) The head of a department may fix a time limit for an employee to request or take compensatory time off and may provide that an employee who fails to take compensatory time off to which he is entitled under paragraph (a) or (b) of this section before the time limit fixed, shall lose his right both to compensatory time off and to overtime pay unless his failure is due to an exigency of the service beyond his control.

NIGHT PAY

§ 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay.

(b) The head of a department may designate a time after 6 p.m. and a time before 6 a.m. as the beginning and end, respectively, of nightwork for the purpose of paragraph (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by paragraph (a) of this section. Times so designated as the beginning or end of nightwork shall correspond reasonably with the end or beginning, respectively, of the customary hours of business in the locality.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

§ 550.122 Computation of night pay differential.

(a) *Absence on holidays or in travel status.* An employee is entitled to a night pay differential for a period when he is excused from nightwork on a holiday or other nonworkday and for night hours of his tour of duty while he is in an official travel status, whether performing actual duty or not.

(b) *Absence on leave.* An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours.

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to a different daily tour of duty.* An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan 28, 1983]

PAY FOR HOLIDAY WORK

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

(b) An employee is entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

(c) An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.

[33 FR 12458, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

§ 550.132 Relation to overtime, night, and Sunday pay.

(a) Premium pay for holiday work is in addition to overtime pay or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

(b) Notwithstanding premium pay for holiday work, the number of hours of holiday work are included in determining for overtime pay purposes the total number of hours of work performed in the administrative workweek in which the holiday occurs.

(c) The number of regularly scheduled hours of duty on a holiday that fall within an employee's basic workweek on which the employee is excused from duty are part of the basic workweek for overtime pay computation purposes.

REGULARLY SCHEDULED STANDBY DUTY PAY

§ 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10.

§ 550.142 General restrictions.

An agency may pay premium pay under § 550.141 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

(a) More than the premium pay which would otherwise be payable under this subpart for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and

(b) Less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, including standby time during which he performs no work.

§ 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.

(a) The requirement for the type of position referred to in § 550.141 that an employee regularly remain at, or within the confines of, his station must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds.

(2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) The words "at, or within the confines, of his station", in § 550.141 mean one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) The words "longer than ordinary periods of duty" in § 550.141 mean more than 40 hours a week.

(d) The words "a substantial part of which consists of remaining in a standby status rather than performing work" in § 550.141 refer to the entire tour of duty. This requirement is met:

(1) When a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour;

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the tour of duty devoted to standing by is at least 25 percent of the entire tour of duty; or

(3) When an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is in a standby status, as referred to in § 550.141, only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods and work performed when called out during periods ordinarily spent in a standby status.

§550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in §550.141, to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10:

(1) A position with a tour of duty of the 24 hours on duty, 24 hours off duty type and with a schedule of: 60 hours a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 72 hours a week—15 percent, unless 24 or more hours of actual work is customarily required, in which event—20 percent; 84 hours or more a week—25 percent.

(2) A position with a tour of duty requiring the employee to remain on duty during all daylight hours each day, or for 12 hours each day, or for 24 hours each day, with the employee living at his station during the period of his assignment to his tour, and with a schedule of: 5 days a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 6 days a week—15 percent, unless 30 or more hours of actual work is customarily required, in which event 20 percent; 7 days a week—25 percent.

(3) A position in which the employee has a basic workweek requiring full-time performance of actual work, and is required, in addition, to remain on standby duty: 14 to 18 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—15 percent; 19 to 27 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—20 percent; 28 or more hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—25 percent; 7 to 9 hours on one or more of his regular weekly nonworkdays—15 percent; 10 to 13 hours on one or more of his regular weekly nonworkdays—20 percent; 14 or more hours on one or more of his regular weekly nonworkdays—25 percent.

(4) When an agency pays an employee one of the rates authorized by paragraph (a)(1), (2), or (3) of this section, the agency shall increase this rate by adding (i) 2½ percent to the rate when the employee is required to perform Sunday work on an average of 20 to 40 Sundays over a year's period or (ii) 5 percent to the rate when the employee is required to perform Sunday work on an average of 41 or more Sundays over a year's period but the rate thus increased may not exceed 25 percent.

(b) If an employee is eligible for premium pay on an annual basis under § 550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

ADMINISTRATIVELY UNCONTROLLABLE WORK

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay.

[55 FR 41177, Oct. 10, 1990]

§ 550.152 [Reserved]

§ 550.153 Bases for determining positions for which premium pay under § 550.151 is authorized.

(a) The requirement in § 550.151 that a position be one in which the hours of duty cannot be controlled administratively is inherent in the nature of such a position. A typical example of a position which meets this requirement is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively. In such a situation, the hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of a position referred to in § 550.151, an employee is required to perform substantial amounts of irregular or occasional overtime work. In regard to this requirement:

(1) A substantial amount of irregular or occasional overtime work means an average of at least 3 hours a week of that overtime work.

(2) The irregular or occasional overtime work is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under paragraphs (b)(1) and (2) of this section.

(c) The words in § 550.151 that an employee is generally "responsible for recognizing, without supervision, circumstances which require him to remain on duty" mean that:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(d) The words "circumstances which require him to remain on duty" as used in § 550.151 mean that:

(1) The employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his regular workday, the employee resumes duty in accordance with a prearranged plan or an awaited event. Performance of only call-back overtime work referred to in § 550.112(f) does not meet this requirement.

(2) The employee has no choice as to when or where he may perform the work when he remains on duty in continuation of a full daily tour of duty. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status, that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay:

(1) A position which requires an average of at least 3 but not more than 5 hours a week of irregular or occasional overtime work—10 percent;

(2) A position which requires an average of over five but not more than 7 hours a week of irregular or occasional overtime work—15 percent;

(3) A position which requires an average of over seven but not more than 9 hours a week or irregular or occasional overtime work—20 percent;

(4) A position which requires an average of over 9 hours a week of irregular or occasional overtime work—25 percent.

(b) If an agency proposes to pay an employee premium pay on an annual basis under § 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970; 55 FR 41178, Oct. 10, 1990]

General Rules Governing Payments of Premium Pay on an Annual Basis

§ 550.161 Responsibilities of the agencies.

The head of each agency, or an official who has been delegated authority to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by OPM under § 550.144 or § 550.154 which is applicable to each employee paid under § 550.141 or § 550.151; or, if no rate fixed under § 550.144 or § 550.154 is considered applicable, proposing a rate of premium pay on an annual basis to OPM.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action is necessary to meet the requirements of section 5545(c) of title 5, United States Code, and this subpart.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6312, Apr. 18, 1970]

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under § 550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 19897, Dec. 28, 1968; 35 FR 6312, Apr. 18, 1970]

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under Part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

§ 550.171 Authorization of pay for Sunday work.

An employee is entitled to pay at his rate of basic pay plus premium pay at a rate equal to 25 percent of his rate of basic pay for each hour of Sunday work which is not overtime work and which is not in excess of 8 hours for each regularly scheduled tour of duty which begins or ends on Sunday.

[34 FR 19495, Dec. 10, 1969]

§ 550.172 Relation to overtime, night, and holiday pay.

Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.

Subpart B—[Reserved]

Subpart C—Allotments and Assignments From Federal Employees

AUTHORITY: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959-1963 Comp., p. 502.

SOURCE: 46 FR 2325, Jan. 9, 1981, unless otherwise noted.

DEFINITIONS

§ 550.301 Definitions.

In this subpart:

Agency means an Executive agency as defined by section 105 of Title 5, United States Code.

Allotment means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

Allottee means the person or institution to whom an allotment is made payable.

Allotter means the employee from whose pay an allotment is made.

Association of management officials and/or supervisors means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

Combined Federal Campaign means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

Continental United States means the several States and the District of Columbia, but excluding Alaska and Hawaii.

Dues means the regular periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

Employee means an employee of an agency, unless otherwise provided.

Foreign affairs agency means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

Labor organization means a labor organization as defined by section 7103(a)(4) of Title 5, United States Code, unless specified otherwise.

Pay means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

GENERAL PROVISIONS

§ 550.311 Authority of agency.

(a) An agency shall permit an employee to make:

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331;

(3) An allotment for charitable contributions to a Combined Federal Campaign under §§ 550.341 and 550.342;

(4) An allotment for income tax withholding under § 550.351;

(5) Up to two allotments for savings under Department of Treasury regulations as codified at Part 209 of Title 31, Code of Federal Regulations;

(6) An allotment for savings for an employee assigned to a post of duty outside the continental United States under § 550.361;

(7) An allotment for child support and/or alimony payments under § 550.371.

(b) In addition to those allotments provided for in paragraph (b) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency.

(c) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 55 of Title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

§ 550.312 General limitations.

(a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization.

(b) The total amount of allotments may not exceed the pay due the allotter for a particular period.

(c) An employee shall request in writing a change in or the revocation of an allotment.

(d) Allotters shall agree that the agency shall be held harmless for any authorized allotment disbursed by the agency in accordance with the employee's request for an allotment from pay.

(e) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

LABOR ORGANIZATION

§ 550.321 Authority.

Section 7115, Title 5, United States Code, authorizes an employee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of Title 5, United States Code. Such an allotment shall be effected in accordance with such rules and regulations as may be prescribed by the Federal Labor Relations Authority.

§ 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue an allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

ASSOCIATION OF MANAGEMENT OFFICIALS AND/OR SUPERVISORS

§ 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is a member of an association of management officials and/or supervisors with which the agency has agreed in writing to deduct allotments for the payment of dues to the association.

COMBINED FEDERAL CAMPAIGN

§ 550.341 Scope.

An agency shall permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign. Allotments for contributions to the Department of Defense Overseas Combined Federal Campaign shall be permitted in accordance with a special agreement between the Office of Personnel Management and the Department of Defense which may contain any necessary exceptions to these regulations.

§ 550.342 Limitation of allotment.

(a) An agency shall permit an employee to make an allotment for a charitable contribution to a Combined Federal Campaign only when the employee is employed in an area in which a Combined Federal Campaign authorized by the Office of Personnel Management is established.

(b) An allotment to a Combined Federal Campaign shall be:

(1) For a term of 1 year beginning with the first pay period which begins in January and ending with the last pay period which begins in December, and

(2) An equal amount deducted each pay period. Minimum deductions will be established by agreement between OPM and officials of the Combined Federal Campaign.

(c) The allotter may not change the amount deducted each pay period during the term of an allotment to a Combined Federal Campaign. The allotter shall be informed of this restriction before the allotment is requested.

(d) The allotter may voluntarily discontinue the allotment at any time, but a discontinued allotment may not be reinstated.

INCOME TAX WITHHOLDING

§ 550.351 Scope.

When an employee has a legal obligation to pay, but the agency has no legal obligation to withhold, State, District of Columbia, or local income or employment taxes, an agency shall permit an employee to make an allotment for payment of the taxes.

ALLOTMENTS FOR SAVINGS

§ 550.361 Scope.

An agency shall permit an employee within the continental United States to make up to two allotments of pay to a financial organization of his/her choice, for credit to his/her savings account as authorized under Department of Treasury regulations codified at Part 209 of Title 31, Code of Federal Regulations. Additional allotments to savings for these employees will not be permitted under this part.

An employee assigned to a post of duty outside the continental United States who is not covered under Department of Treasury regulations at 31 CFR Part 209 shall be permitted to make allotments of pay to a financial organization of his/her choice for credit to his/her savings account.

ALIMONY AND/OR CHILD SUPPORT

§ 550.371 Scope.

An agency shall permit an employee to make an allotment for alimony and/or child support when he or she voluntarily elects to do so. However, this provision does not apply to garnishment orders issued to enforce child support and/or alimony obligations which are codified at Part 581 of this title.

FOREIGN AFFAIRS AGENCY ORGANIZATIONS

§ 550.381 Scope.

If an agency permits an employee to make an allotment for dues to a foreign affairs agency organization, the agency must also provide, in accordance with Section 15 of Executive Order 11636:

(a) that the employee be allowed to revoke the authorization at least every six months; and

(b) that the allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

Subpart D—Payments During Evacuation

AUTHORITY: 5 U.S.C. 5527; E.O. 10982, 3 CFR, 1959-1963 Comp., p. 502.

§ 550.401 Purpose.

The purpose of this subpart is to provide the authority necessary for an agency to administer Subchapter III (except section 5525) of chapter 55 of title 5, United States Code, by establishing an efficient, orderly, and equitable procedure for the payment of pay, allowances, and differentials in the event of an emergency evacuation of employees or their dependents, or both, from or within United States areas for military reasons or because of imminent danger to their lives.

§ 550.402 Applicability.

This subpart applies to agencies which exercise the authority under subchapter III of chapter 55 of title 5, United States Code, and Executive order to provide for payments for their employees who are located in United States areas.

§ 550.403 Employee coverage.

This subpart applies to:

(a) Employees of an agency who are U.S. citizens or who are U.S. nationals;

(b) Employees of an agency who are not citizens or nationals of the United States but who were recruited with a transportation agreement which provides return transportation to the area from which recruited; and

(c) Alien employees of an agency hired within the United States.

§ 550.404 Definitions.

In this subpart:

(a) "Agency" means an Executive agency as defined by section 105 of title 5, United States Code.

(b) "Employee" means an employee of an agency.

(c) "Executive order" means Executive Order No. 10982 issued December 25, 1961.

(d) "United States area" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and any territory or possession of the United tates, but excluding the Trust Terri- ory of the Pacific Islands.

550.405 Limitations.

An agency may not provide an au- ority in its regulations to make pay- ents under subchapter III of chapter 5 of title 5, United States Code, and is subpart when evacuations are oc- sioned by a natural disaster within e 48 contiguous States or the Dis- ict of Columbia.

550.406 Approval of agency regulations.

(a) *Advance approval.* OPM has pre- ribed, and published in the Federal ersonnel Manual, agency regulations r adoption by an agency as the regu- tions authorized by section 5527(c) title 5, United States Code, to be sued by the head of an agency to rry out sections 5522 and 5523 of at title. When the head of an agency oposes to exercise the authority ven him under sections 5522 and 23, he may adopt these agency regu- tions for use in United States areas; for use in specifically designated lo- lities within these areas. When the ency regulations are adopted with- t change as published in the Federal rsonnel Manual, regulations so lopted have the prior approval of PM as required by section 4(b) of the ecutive order. If an agency adopts e agency regulations, it shall notify PM of the date of adoption and of e areas in which the agency regula- ons will be applied.

(b) *Request for prior approval.* hen an agency proposes to issue reg- ations which deviate from the ency regulations published in the ederal Personnel Manual, prior ap- oval as required by section 4(b) of e Executive order must be secured om OPM before the regulations may made effective.

(c) *Revision of agency regulations.* hen OPM revises the agency regula- ons provided for in paragraph (a) of is section, agencies which have pre- ously adopted those agency regula- ons shall adopt the revisions or thin 30 days request approval from PM to retain the regulations without ange.

d) *Supplemental regulations.* When agency has regulations which have been approved under paragraph (a) or (b) of this section, the agency may issue any supplemental regulations or instructions, not inconsistent with its approved regulations, deemed necessary for internal operations.

§ 550.407 Payment to employees of other agencies.

OPM shall publish in the Federal Personnel Manual a list containing the name of each agency which has approved agency regulations and the areas to which the approved agency regulations apply. When this information is published in the Federal Personnel Manual, any agency (whether or not it has approved agency regulations) may make payments in an evacuation situation to an employee (and his dependents and designated representative) of an agency which has approved agency regulations who is assigned to a post of duty within the areas covered by the approved agency regulations. When a payment is made under this subpart by other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

Subpart E—Pay From More Than One Position

AUTHORITY: 5 U.S.C. 5533.

§ 550.501 Scope.

(a) *Applicability.* (1) This subpart and section 5533 of title 5, United States Code, apply in determining an employee's entitlement to receive pay from more than one position.

(2) This subpart and section 5533(a) of title 5, United States Code, apply only to an employee holding more than one position when the aggregate number of hours worked during a week exceeds 40.

(b) *Coverage.* This subpart and section 5533(a) of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the armed forces) in the legislative (except as provided in section 5533(c) of that title), judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.502 Definitions.

In this subpart:

(a) "Employee" means a person holding a position.

(b) "Pay" means pay paid for services in a position but excludes fees paid on other than a time basis.

(c) "Position" has the meaning given that term by section 5531 of title 5, United States Code.

(d) "Week" means the period of 7 calendar days from Sunday through Saturday.

§ 550.503 Exceptions in emergencies.

Section 5533(a) of title 5, United States Code, does not apply to pay from a position for services performed under emergency conditions relating to health, safety, protection of life or property, or national emergency.

§ 550.504 Other exceptions.

(a) When a department, agency, or the government of the District of Columbia encounters difficulty in obtaining employees to perform required personal services because of section 5533(a) of title 5, United States Code, it may make an exception from that section upon determining that the required services cannot be readily obtained otherwise. The exception shall specify the position(s) to which it applies.

(b) The Office of Personnel Management will publish in the Federal Personnel Manual exceptions of general application.

(5 U.S.C. 1104; Pub. L. 95-454, sec. 3(5))

[44 FR 54694, Sept. 21, 1979]

§ 550.505 Report to OPM.

OPM may require a department, agency, or the government of the District of Columbia to submit a periodic report on its use of the exceptions from section 5533(a) of title 5, United States Code.

[33 FR 12458, Sept. 4, 1968. Redesignated at 37 FR 22717, Oct. 21, 1972]

Subpart F—Reduction-in-Retired-Pay Provisions of the Dual Pay Statute

AUTHORITY: 5 U.S.C. 5532.

§ 550.601 Scope.

(a) *Applicability.* This subpart and section 5532 of title 5, United States Code, apply in determining the entitlement to retired or retainer pay of a member or former member of a uniformed service when employed in a position.

(b) *Coverage.* This subpart and section 5532 of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces) in the legislative, judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

[44 FR 44814, July 31, 1979]

§ 550.602 Definitions.

In this subpart: (a) "Member", "position", and "retired or retainer pay" have the meanings given those terms by section 5531 of title 5, United States Code.

(b) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(c) "Officer" means commissioned or warrant officer.

[44 FR 44814, July 31, 1979]

§ 550.603 Exceptions to reduction in retired or retainer pay.

(a) Under conditions set forth in the Federal Personnel Manual, an agency may make exception to the restrictions in 5 U.S.C. 5532(b), without regard to the provisions of 5 U.S.C. 5532 (c) and (e), when the exception is warranted because of special or emergency employment needs which otherwise cannot be readily met. Such exceptions shall apply while the individual for whom the exception was granted continues to serve in the same position. This section applies only to:

(1) Any retired officer of a regular component of the uniformed services who was receiving retired pay on or before January 11, 1979;

(2) Any individual employed in a position on October 13, 1978, so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact that the individual did not satisfy any applicable age requirement.

(b) Except as otherwise provided in paragraph (a) of this section, the Office may, during the period until January 11, 1984, authorize exceptions to the restrictions in 5 U.S.C. 5532 (a), (b), and (c) only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. Such exception granted by the Office with respect to any individual shall terminate upon a break in service of 3 days or more.

(5 U.S.C. 5532) (Pub. L. 95-454 (5 U.S.C. 1101 Note))

[44 FR 54694, Sept. 21, 1979]

§ 550.604 Administrative responsibilities.

(a) *Uniformed services pay centers.* Uniformed services pay centers are responsible for determining the amount of military retired or retainer pay to be withheld.

(b) *Employing agencies.* Federal agencies are responsible for notifying the appropriate uniformed service pay center concerning the Federal civilian pay of retired members according to instructions provided in the Federal Personnel Manual.

[44 FR 44815, July 31, 1979]

Subpart G—Severance Pay

AUTHORITY: 5 U.S.C. 5595; E.O. 11257.

SOURCE: 55 FR 6593, Feb. 26, 1990, unless otherwise noted.

§ 550.701 Introduction.

This subpart contains regulations of the Office of Personnel Management to implement the provisions of 5 U.S.C. 5595. These regulations authorize severance pay for employees who are involuntarily separated from Federal service and who meet other conditions of eligibility.

§ 550.702 Coverage.

Except as provided in 5 U.S.C. 5595(a)(2) (i) through (viii), this subpart applies to each full-time or part-time employee; that is, an employee with a regularly scheduled tour of duty who is serving under a qualifying appointment, as defined in § 550.703.

§ 550.703 Definitions.

In this subpart:

Agency means an agency as defined in 5 U.S.C. 5595(a)(1), except the government of the District of Columbia.

Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee as defined in 5 U.S.C. 5595(a)(2), except an individual employed by the government of the District of Columbia.

Immediate annuity means—

(a) A recurring benefit payable under a Federal civilian or military retirement system that begins to accrue within 1 month after separation; or

(b) An annuity under § 842.204(a)(1) of this chapter for which the commencing date has been postponed under § 842.204(c) of this chapter.

Inefficiency means unacceptable performance or conduct that leads to a separation under part 432 or 752 of this chapter or an equivalent procedure.

Involuntary separation means a separation initiated by an agency against the employee's will and without his or her consent for reasons other than inefficiency, including a separation resulting from the expiration of a time-limited appointment effected within 3 calendar days after separation from a qualifying appointment. In addition, when an employee is separated because he or she declines to accept reassignment outside the commuting area, the separation is "involuntary" if the employee's position description or other written agreement does not provide for such a reassignment. However, an employee's separation is not "involuntary" if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Nonqualifying appointment means an appointment with an intermittent work schedule, and the following appointments regardless of work schedule:

(a) A Presidential appointment;

(b) An emergency appointment;

(c) An excepted appointment under Schedule C or under a noncareer executive assignment under part 305 of this chapter; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

(d) A time-limited appointment that is not made effective within 3 calendar days after separation from a qualifying appointment, including—

(1) A term appointment;

(2) A temporary appointment pending establishment of a register (TAPER);

(3) An overseas limited appointment with a time limitation;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes; and

(5) A limited executive assignment under part 305 of this chapter or an equivalent appointment made for similar purposes.

Qualifying appointment means—

(a) A career or career-conditional appointment in the competitive service or the equivalent in the excepted service;

(b) A career executive assignment under part 305 of this chapter;

(c) A career appointment in the Senior Executive Service;

(d) An excepted appointment without time limitation, except under Schedule C or under a noncareer executive assignment under part 305 of this chapter, or an equivalent appointment made for similar purposes;

(e) An overseas limited appointment without time limitation;

(f) A status quo appointment, including one that becomes indefinite when the employee is promoted, demoted, or reassigned;

(g) A time-limited appointment in the Foreign Service, when the employee was assigned under a statutory authority that carried entitlement to reemployment in the same agency, but this right of reemployment has expired; and

(h) A time-limited appointment that takes effect within 3 calendar days after the end of one or more of the qualifying appointments listed in paragraphs (a) through (g) of this definition.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(c)(1) and night differential for prevailing rate employees under 5 U.S.C. 5343(f), but not including additional pay of any other kind.

Reasonable offer means the offer of a position that meets all the following conditions:

(a) The offer is in writing;

(b) The employee meets established qualification requirements; and

(c) The offered position is—

(1) In the employee's agency, including an agency to which the employee is transferred with his or her function in a transfer of functions between agencies;

(2) Within the employee's commuting area, unless geographic mobility is a condition of employment;

(3) Of the same tenure and work schedule (that is, part-time or full-time); and

(4) Not lower than two grade or pay levels below the employee's current grade or pay level, without consideration of grade or pay retention under part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the repre-

sentative rate of the offered position must not be lower than the representative rate of the grade or pay level that is two grades below the grade of the current position on the same pay schedule as the current position.

Representative rate has the meaning given that term in § 536.102 of this chapter.

Severance pay fund means the total severance pay to which an employee is entitled during a single entitlement under 5 U.S.C. 5595. It includes a basic severance pay allowance and, where applicable, an age adjustment allowance, as computed under § 550.707.

§ 550.704 Eligibility for severance pay.

(a) To be eligible for severance pay, an employee must:

(1) Be serving under a qualifying appointment;

(2) Have completed at least 12 months of continuous service, as described in § 550.705; and

(3) Be removed from Federal service by involuntary separation.

(b) An employee is not eligible for severance pay if he or she:

(1) Is serving under a nonqualifying appointment;

(2) Declines a reasonable offer;

(3) Is serving under a qualifying appointment in an agency scheduled by law or Executive order to be terminated within 1 year after the date of the appointment, unless on the date of separation, the agency's termination has been postponed to a date more than 1 year after the date of the appointment, or the appointment is effected within 3 calendar days after separation from a qualifying appointment;

(4) Is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code, unless the compensation is being received concurrently with pay or is the result of someone else's death; or

(5) Is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. Such an employee is ineligible even if all or part of the annuity is offset by payments from a non-Federal retirement system the employee elected instead of Federal civilian retirement benefits or disability benefits received from the Department of Veterans Affairs.

§ 550.705 Criteria for meeting the requirement for 12 months of continuous employment.

(a) The requirement for 12 months of continuous employment is met if, on the date of separation, an employee has held one or more civilian Federal positions over a period of 12 months without a single break in service of more than 3 calendar days. The positions held must have been under:

(1) One or more qualifying appointments; or

(2) One or more nonqualifying temporary appointments that precede the current qualifying appointment.

(b) When a break in service that is covered by severance pay interrupts otherwise continuous Federal employment, the entire period is considered continuous service.

(c) The period during which an employee receives continuation of pay or compensation for an injury on the job under chapter 81 of title 5, United States Code, is considered continuous Federal service.

§ 550.706 Criteria for meeting the requirement for involuntary separation.

(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving:

(1) Specific written notice that they will be involuntarily separated, and the notice of separation is not cancelled before the resignation is effected; or

(2) A general written notice of reduction in force or transfer of function that announces that all positions in the competitive area will be abolished or transferred to another commuting area.

(b) Except for resignations under the conditions described in paragraph (a) of this section, all resignations are voluntary separations and do not carry entitlement to severance pay.

§ 550.707 Computation of severance pay.

(a) *Basic severance pay allowance.* Except as provided in paragraph (b) of this section, the basic severance pay allowance consists of the following:

(1) One week of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service through 10 years;

(2) Two weeks of pay at the rate of basic pay for the position held by the employee at the time of separation for each full year of creditable service beyond 10 years; and

(3) Twenty-five percent of the otherwise applicable amount for each full 3 months of creditable service beyond the final full year.

(b) *Basic severance pay allowance for employees with variable work schedules or rates of pay.* The basic severance pay allowance is computed on the basis of the average rate of basic pay for the last position held during the 26 biweekly pay periods immediately preceding separation for an employee in a position:

(1) In which the work schedule regularly varies from full-time to part-time throughout the year;

(2) In which the rate of annual premium pay for standby duty varies throughout the year; or

(3) Under a prevailing rate schedule in which the work schedule regularly alternates between a day shift and a night shift throughout the year.

(c) *Age adjustment allowance.* The basic severance pay allowance is augmented by an age adjustment allowance consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

§ 550.708 Creditable service.

The following types of service are creditable for computing an employee's severance pay under § 550.707:

(a) Civilian service performed by an employee;

(b) Service performed with the United States Postal Service or the Postal Rate Commission; and

(c) Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation.

§ 550.709 Payment of severance pay.

(a) Each severance payment must be equal to the employee's rate of basic pay, less taxes and Medicare, and, when appropriate, contributions under the Federal Insurance Contributions Act (FICA). Payment must be made at the same pay period intervals salary would be paid if the employee were still employed. The final payment may be a partial payment consisting of that portion of the severance pay fund remaining from the employee's immediate entitlement of the balance of the lifetime limitation of 1 year.

(b) When an employee receives severance pay as the result of separation from a qualifying temporary appointment (that is, a temporary appointment effected within 3 days after separation from a qualifying permanent appointment), severance pay shall be paid in an amount equal to the rate of basic pay received at the time of separation from the qualifying temporary appointment.

(c) When an employee is in a nonpay status immediately before separation, basic pay is the pay the employee would have received if he or she had been in a pay status when separated.

§ 550.710 Suspension of severance pay.

(a) When an individual receiving severance pay is given one or more nonqualifying temporary appointments, the severance pay is suspended on the day of the appointment. Severance pay begins again when the employee separates from the nonqualifying temporary appointment.

(b) When an individual who is eligible for severance pay is given a nonqualifying temporary appointment before severance payments begin, the severance payments do not begin until the employee is separated from the temporary appointment.

§ 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when:

(a) An employee is appointed to the Federal Government under a qualifying appointment;

(b) The severance pay fund is exhausted; or

(c) The employee has received 1 year of severance pay.

§ 550.712 Reemployment; recredit of service.

(a) When a former employee is reemployed, the employing agency shall record on the appointment document the number of weeks of severance pay received (including partial weeks).

(b) If an employee again becomes entitled to severance pay, the agency in which entitlement arises shall recompute the severance pay allowance on the basis of all creditable service and current age and deduct from the number of weeks it would take to exhaust the allowance the number of weeks for which severance pay previously was received.

§ 550.713 Records.

Agencies shall maintain records, by fiscal year, of the number of employees who receive severance pay and the total amount of severance pay paid. When entitlement to severance pay arises as the result of contracting a Federal function to a private contractor, the affected agency also shall record the number of separated employees who go to work for the contractor within 90 days after the effective date of the contract. The Office of Personnel Management may require agencies to report such information to the Office.

Subpart H—Back Pay

AUTHORITY: 5 U.S.C. 5596(c); Pub. L. 100-202.

SOURCE: 46 FR 58275, Dec. 1, 1981, unless otherwise noted.

§ 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay, interest, and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due to the employee. This subpart should be read together with this section of law.

(b) This subpart does not apply to any reclassification action.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

§ 550.802 Coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in § 550.803 of this subpart.

(b) This subpart does not apply to—

(1) Employees of the government of the District of Columbia; and

(2) Employees of the Tennessee Valley Authority.

§ 550.803 Definitions.

In this subpart:

Agency has the meaning given that term in section 5596(a) of title 5, United States Code.

Appropriate authority means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

Collective bargaining agreement has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).

Employee means an employee or former employee of an agency

Grievance has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system established under Part 771 of this chapter.

Pay, allowances, and differentials means monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function.

Unfair labor practice means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980 (22 U.S.C. 4115).

Unjustified or unwarranted personnel action means an act of commission or an act of omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

§ 550.804 Determining entitlement to back pay.

(a) When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5596 of title 5, United States Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(b) The requirement for a "timely appeal" is met when—

(1) An employee or an employee's personal representative initiates an appeal or grievance under an appeal or grievance system, including appeal or grievance procedures included in a collective bargaining agreement; a claim against the Government of the United States; a discrimination complaint; or an unfair labor practice charge; and

(2) An appropriate authority accepts that appeal, grievance, claim, complaint, or charge as timely filed.

(c) The requirement for an "administrative determination" is met when an appropriate authority determines, in writing, that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(d) The requirement for "correction of the personnel action" is met when an appropriate authority, consistent with law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement, after a review, corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

§ 550.805 Back pay computations.

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.

(c) Except as provided in paragraph (d) of this section, in computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency may not include—

(1) Any period during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(2) Any period during which an employee was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the unjustified or unwarranted personnel action.

(d) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall grant, upon request of an employee, any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

(e) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall deduct—

(1) Any amounts earned by an employee from other employment during the period covered by the corrective action; and

(2) Any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, shall be returned to the appropriate system. The agency shall include as other employment only employment engaged in by the employee to take the place of employment from which the employee has been separated by the unjustified or unwarranted personnel action.

(f) For the purpose of computing the amount of back pay under paragraph (e) of this section, interest shall be included in the amount from which deductions for erroneous payments are made, as required by § 550.805(e)(2) of this part.

(g) An agency shall credit annual leave restored to an employee as a result of the correction of an unjustified or unwarranted personnel action in excess of the maximum leave accumulation authorized by law to a separate leave account for use by the employee. The employee shall schedule and use annual leave in such a separate leave account as follows:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

§ 550.806 Interest computations.

(a) Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had not occurred.

(b) In computing the amount of interest due under section 5596 of title 5, United States Code, the agency shall reduce the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section by an amount determined as follows:

(1) Divide the employee's earnings from other employment during the period covered by the corrective action, as described in § 550.805(e)(1) of this part, by the total amount of back pay prior to any deductions;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the amount of pay, allowances, and differentials due for each date described in paragraph (a) of this section.

(c) The agency shall compute interest on the amount of back pay computed under section 5596 of title 5, United States Code, and this subpart before making deductions for erroneous payments, as required by § 550.805(e)(2) of this part.

(d) The rate or rates used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury as the overpayment rate under section 6621(a)(1) of title 26, United States Code (or its predecessor statute), for the period or periods of time for which interest is payable.

(e) On each day for which interest accrues, the agency shall compound interest by dividing the applicable interest rate (expressed as a decimal) by 365 (366 in a leap year).

(f) The agency shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.

(g) To the extent administratively feasible, the agency shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends and the interest payment is issued after the payment of back pay is issued, the amount of the payment of back pay shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if any) and interest until the date on which accrual of interest ends.

(h) This section shall not apply to any determination made before December 22, 1987, if the determination was no longer subject to reconsideration or higher-level review or appeal on December 22, 1987.

[53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

§ 550.807 Payment of reasonable attorney fees.

(a) An employee or an employee's personal representative may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Such a request may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action. However, if the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency, the employee or the employee's personal representative shall present the request to the appropriate authority from which the appeal was taken.

(b) The appropriate authority to which such a request is presented shall provide an opportunity for the employing agency to respond to a request for payment of reasonable attorney fees.

(c) Except as provided in paragraph (e) of this section, when an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee, the payment of reasonable attorney fees shall be deemed to be warranted only if—

(1) Such payment is in the interest of justice, as determined by the appropriate authority in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(2) There is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice.

(d) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

(e) When a determination by an appropriate authority that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee is based on a finding of discrimination prohibited under section 2302(b)(1) of title 5, United States Code, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k)).

(f) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for the services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.

[46 FR 58275, Dec. 1, 1981. Redesignated at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

§ 550.808 Prohibition against setting aside proper promotions.

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

[46 FR 58275, Dec. 1, 1981, as amended at 53 FR 18072, May 20, 1988, and 53 FR 45886, Nov. 15, 1988]

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

AUTHORITY: 5 U.S.C. 5545(d), 5548(b).

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for irregular or intermittent duty involving unusual physical hardship or hazard to employees.

§ 550.902 Definitions.

In this subpart:

(a) "Agency" means an agency as defined in section 5102(a) of title 5, United States Code.

(b) "Duty involving physical hardship" means a duty which may not in itself be hazardous but which causes extreme physical discomfort or distress and which is not adequately alleviated by protective or mechanical devices, such as a duty requiring exposure to extreme temperatures for a long period of time; a duty involving arduous physical exertion, such as a duty which must be performed in cramped conditions; a duty involving exposure to fumes, dust, or noise which causes nausea, skin, eye, ear, or nose irritation.

(c) "Employee" means an employee of an agency who is covered by chapter 51 of title 5, United States Code.

(d) "Hazardous duty" means a duty performed under circumstances in which an accident could result in serious injury or death, such as a duty performed on a high structure where protective facilities are not used, or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

(e) "Hazard pay differential" means additional pay for the performance of irregular or intermittent hazardous duty or duty involving physical hardship.

§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as Appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to Appendix A may be made by OPM on its own motion or at the request of an agency. An agency shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing (1) the nature of the duty, (2) the degree to which the employee is exposed to hazard or physical hardship, (3) the length of time during which the duty will continue to exist and (4) the degree to which control may be exercised over the physical hardship or hazard, and may recommend the rate of hazard pay differential to be established.

§ 550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in Appendix A to an employee who is assigned to and performs any irregular or intermittent duty specified in the appendix when that duty is not usually involved in carrying out the duties of his position. Hazard pay differential may not be paid an employee when the hazardous duty has been taken into account in the classification of his position.

(b) For the purpose of this section:

(1) "Not usually involved in carrying out the duties of his position" means that even though the hazardous duty may be embraced within the employee's position description it is not performed with sufficient regularity to constitute an element in fixing the grade of the position.

(2) "Has been taken into account in the classification of his position" means that the duty constitutes an element used in establishing the grade of the position.

[33 FR 15199, Oct. 11, 1968; 33 FR 15471, Oct. 18, 1968]

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay him the hazard differential for the hours in a pay status on the day (calendar day or, to avoid problems involving uncommon tours of duty, and when designated by the agency, a 24-hour period) on which the duty is performed. For purposes of this section hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began and allowable differential shall be charged to that day.

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when one or more of the conditions requisite for such payment ceases to exist in his case.

§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Exposure to Hazardous Weather or Terrain		
(1) *Work in rough and remote terrain.* When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.	25	First pay period beginning after July 1, 1969.
(2) *Traveling under hazardous conditions.* (a) When travel over secondary or unimproved roads to isolated mountain top installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snow slides.	25	Do.
(b) When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 10 feet.	25	Do.
(c) When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger, or very great danger, on the windchill chart (Appendix A-1), and shelter (other than temporary shelter) or assistance is not readily available.	25	Do.
(3) *Snow or ice removal operations.* When participating in snowplowing or snow or ice removal operations, regardless of whether on primary, secondary or other class of roads, when (a) there is danger of avalanche, or (b) there is danger of missing the road and falling down steep mountainous slopes because of lack of snow stakes, "white-out" conditions, or sloping ice-pack covering the snow.	25	Do.
(4) *Water search and rescue operations.* Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 35 m.p.h. (classified as gale winds) or in water search and rescue operations conducted at night.	25	Do.
(5) *Travel on Lake Pontchartrain.* (a) When embarking, disembarking or traveling in small craft (boat) on Lake Pontchartrain when wind direction is from north, northeast, or northwest, and wind velocity is over 15 knots, or	25	Do.
(b) When travelling in small crafts, where craft is not radar equipped, or, Lake Pontchartrain is necessary due to emergency or unavoidable conditions and the trip is made in a dense fog under fog run procedures.	25	Do.
(6) *Hazardous boarding or leaving of vessels.* When duties (a), (b), or (c) are performed under adverse conditions of foul weather, ice, or night and when the sea state is high (3 feet and above).		
(a) Boarding or leaving vessels at sea or standing offshore during lightering or personnel transfer operations.	25	First pay period beginning after May 7, 1970.
(b) Boarding, leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral surrounded shorelines.		
(c) Transferring equipment between a small boat and rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock.		
(7) *Small craft tests under unsafe sea conditions.* Conducting craft tests to determine the seakeeping characteristics of small craft in a seaway when U.S. storm warnings normally indicate unsafe seas for a particular size craft.	25	First pay period beginning on or after Sept. 28, 1972.
(8) *Working on a drifting sea ice floe.* When the job requires that the work be performed out on sea ice, e.g., installing scientific instruments and making observations for research purposes.	25	First pay period beginning after March 16, 1973.
Expusure to Physiological Hazards		
(1) *Pressurechamber subject.* (a) Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures.	25	Do.
(b) *Working in pressurized sonar domes.* Performing checkout of sonar system after sonar dome has been pressurized. This may include such duties as changing transducer elements, setting of transducer turntables, checking of cables, piping, valves, circuits, underwater telephone, and pressurization plugs.	8	First pay period beginning after Feb. 16, 1975.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
(c) Working in nonpressurized sonar domes that are a part of an underwater system. Performing certification pretrial inspections, involving such duties as calibrating, adjusting, and photographing equipment, in limited space and with limited egress.	4	First pay period beginning after Feb. 16, 1975.
(2) *Simulated altitude chamber subjects. Observers.* Participating in simulated altitude studies ranging from 18,000 to 150,000 feet either as subject or as observer exposed to the same conditions as the subject.	25	Do.
(3) *Centrifuge subjects.* Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure.	25	Do.
(4) *Rotational flight simulator subject.* Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes.	25	First pay period beginning after July 1, 1969.
Hot Work—Working in confined spaces wherein the employee is subject to temperatures in excess of 110° F.	4	First pay period beginning after Feb. 16, 1975.
(5) *Environmental thermal-chamber tests.* Subjects and observers exposed to the hazards and physical hardships of an environmental chamber-thermal test which simulates adverse weather or sea conditions such as the exposure to subzero temperatures, high heat and humidity, and cold water, spray, wind, and wave action.	25	May 4, 1988.
Exposure to Hazardous Agents, work with or in close proximity to:		
(1) *Explosive or incendiary materials.* Explosive or incendiary materials which are unstable and highly sensitive.	25	First pay period beginning after July 1, 1969.
(2) *At-sea shock and vibration tests.* Arming explosive charges and/or working with, or in close proximity to, explosive armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies.	25	Do.
(3) *Toxic chemical materials.* Toxic chemical materials when there is a possibility of leakage or spillage.	25	Do.
(4) *Fire retardant materials tests.* Conducting tests on fire retardant materials when the tests are performed in ventilation restricted rooms where the atmosphere is continuously contaminated by obnoxious odors and smoke which causes irritation to the eyes and respiratory tract.	25	Do.
(5) *Virulent biologicals.* Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.	25	Do.
Participating in Liquid Missile Propulsion Tests and Certain Solid Propulsion Operations:		
(1) *Tanking and detanking.* Tanking or detanking operations of a missile or the test stand "run" bottles with liquid propellants.	25	Do.
(2) *Hoisting a tanked missile.* Hoisting a tanked missile or a solid propellant propulsion system into and/or over the test stand.	25	Do.
(3) *Pressure tests.* Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations.	25	First pay period beginning after July 1, 1969.
(4) *Test stand tests.* Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component.	25	Do.
(5) *Disassembly and breakdown.* Disassembly and breakdown of a contaminated missile system or test stand plumbing after test.	25	Do.
(6) *"Go" condition test stand work.* Working on any test stand above the 50-foot level or any stand work while the system is in a "go" condition.	25	Do.
(7) *Arming and dearming propulsion systems.* Arming, dearming or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system.	25	Do.
(8) *Demolition and destruct tests.* Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven and the test techniques do not conform to standard or proven procedures.	25	Do.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Work in Fuel Storage Tanks		
When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank.	25	Do.
Firefighting		
(1) *Forest and range fires.* Participating as a member of a firefighting crew in fighting forest and range fires on the fireline.	25	Do.
(2) *Equipment, installation, or building fires.* Participating as an emergency member of a firefighting crew in fighting fires of equipment, installations, or buildings.	25	Do.
(3) *In-water under-pier firefighting operations.* Participating in in-water under-pier firefighting operations (involving hazards beyond those normally encountered in firefighting on land, e.g., strong currents, cold water temperature, etc.)	25	Do.
Work in Open Trenches:		
Work in an open trench 15 feet or more deep until proper shoring has been installed.	25	Do.
Underground Work:		
Work underground performed in the construction of tunnels and shafts, and the inspection of such underground construction, until the necessary lining of the shaft or tunnel has eliminated the hazard.	25	Do.
Underwater Duty		
(1) *Submerged submarine or deep research vehicle.* Duty aboard a submarine or deep research vehicle when it submerges.	25	Do.
(2) *Diving.* Diving, including SCUBA (self-contained underwater breathing apparatus) diving, required in scientific and engineering pursuits, or search and rescue operations, when: (a) at a depth of 20 feet or more below the surface; or, (b) visibility is restricted; or, (c) in rapidly flowing or cold water; or, (d) vertical access to the surface is restricted by ice, rock, or other structure; or, (e) testing or working with hardware which presents special hazards (such as work with high voltage equipment or work with underwater mockup components in an underwater space simulation study)	25	Do.
Sea Duty Aboard Deep Research Vessels:		
Participating in sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea-state is high (12-knot winds and 3-foot waves) and the work is done on deck in relatively unprotected areas.	25	Do.
Collection of Aircraft Approach and Landing Environmental Data:		
When operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations.	25	First pay period beginning after July 1, 1969.
Experimental Landing/Recovery Equipment Tests:		
Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks.	25	Do.
Land Impact or Pac Abort of Space Vehicle:		
Actual participating in dearming and safing explosive ordinance, toxic propellant and high pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition.	25	Do.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Height Work:		
Working on any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as snow, sleet, ice on walking surfaces, darkness, lightning, steady rain, or high wind velocity.	25	Do.
Flying, participating in:		
(1) *Pilot proficiency training.* Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests.	25	Do.
(2) *Delivery of new aircraft for flight testing.* Flights to deliver aircraft which has been prepared for one-time flight without being test flown prior to delivery flight.	25	Do.
(3) *Test flights of new modified, or repaired aircraft.* Test flights of a new or repaired aircraft or modified aircraft when the modification may affect the flight characteristics of the aircraft.	25	Do.
(4) *Reduced gravity—parabolic arc flights—subjects/observers.* Reduced gravity flight testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through +2 gravity conditions.	25	Do.
(5) *Launch and recovery.* Test flights involving launch and recovery aboard an aircraft carrier.	25	Do.
(6) *Limited control flights.* Flights undertaken under unusual and adverse conditions (such as extreme weather, maximum load or overload, limited visibility, extreme turbulence, or low level flights involving fixed or tactical patterns) which threaten or severely limit control of the aircraft.	25	Do.
(7) *Flight tests of expandable aircraft tires.* Landing to test aircraft tires designed to deflate upon retraction, undertaken to appraise the normal deflate-reinflate cycle and also to evaluate the capability to make a satisfactory landing with the tires deflated.	25	Do.
(8) *Landing and taking-off in polar areas.* Landing in polar areas on unprepared snow or ice surfaces and/or taking-off under the same conditions.	25	Do.
Experimental Parachute Jumps:		
Participating as a jumper in field exercises to test and evaluate new types of jumping equipment and/or jumping techniques.	25	Do.
Ground Work Beneath Hovering Helicopter:		
Participating in ground operations to attach external load to helicopter hovering just overhead.	25	Do.
Sling-suspended transfers. When performance of duties requires transfer from a helicopter to a ship via a sling on the end of a steel cable or from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are underway.	25	First pay period beginning after Oct. 11, 1969.
Carrier suitability trials aboard aircraft carriers. Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery, and refueling operations.	25	Do.
Cargo handling during lightering operations. Off-loading of cargo and supplies from surface ships to Landing Craft—Medium (LCM) boats involving exposure not only to falling cargo but such other hazards as shifting cargo within the LCM, swinging cargo hooks, and possibility of falling between the LCM and cargo vessel.	25	Do.
Work in unsafe structures: Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado, flood, or similar cause, when the structure has been declared unsafe by competent technical authority, and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority.	25	First pay period beginning on or after Apr. 11, 1976.

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I—Continued

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Tropical Jungle Duty: Work outdoors in undeveloped jungle regions outside the continental United States. Work must involve both of the following: (1) An unusual degree of physical hardship caused by high heat, humidity, or other inclement conditions, and (2) An unusual danger of serious injury or illness due to: (a) Travel on unimproved roads or rudimentary trails in rugged terrain (e.g., walking on narrow trails in steep mountainous areas, fording deep, fast-moving rivers, and crossing deep crevasses via log or other unsafe means); (b) Immediate presence of dangerous wildlife (e.g., venomous snakes, poisonous insects, and large carnivores); or (c) Known exposure to serious disease for which adequate protection cannot be provided	25	June 14, 1989

(5 U.S.C. 5595; E.O. 11257, 3 CFR 1964-1965 Comp., p. 357)

[34 FR 11083, July 1, 1969; 34 FR 12623, Aug. 2, 1969, as amended at 34 FR 15747, Oct. 11, 1969; 35 FR 7172, May 7, 1970; 37 FR 20248, Sept. 28, 1972; 39 FR 7115, Mar. 16, 1973; 40 FR 7437, Feb. 20, 1975; 41 FR 12635, Mar. 26, 1976; 41 FR 14165, Apr. 2, 1976; 53 FR 36557, Sept. 21, 1988; 54 FR 8267, Feb. 28, 1989; 54 FR 25224, June 14, 1989 and 55 FR 1354, Jan. 14, 1990]

APPENDIX A-1—WINDCHILL CHART

WINDCHILL CHART

	Local Temperature (°F)										
Wind Speed (MPH)	32	23	14	5	-4	-13	-22	-31	-40	-49	-58
Calm	32	23	14	5	-4	-13	-22	-31	-40	-49	-58
5	29	20	10	1	-9	-18	-28	-37	-47	-56	-65
10	18	7	-4	-15	-26	-37	-48	-59	-70	-81	-92
15	13	-1	-13	-25	-37	-49	-61	-73	-85	-97	-109
20	7	-6	-19	-32	-44	-57	-70	-83	-96	-109	-121
25	3	-10	-24	-37	-50	-64	-77	-90	-104	-117	-130
30	1	-13	-27	-41	-54	-68	-82	-97	-109	-123	-137
35	-1	-15	-29	-43	-57	-71	-85	-99	-113	-127	-142
40	-3	-17	-31	-45	-59	-74	-87	-102	-116	-131	-145
45	-3	-18	-32	-46	-61	-75	-89	-104	-118	-132	-147
50	-4	-18	-33	-47	-62	-76	-91	-105	-120	-134	-148
For Properly Clothed Persons	Little Danger		Considerable Danger				Very Great Danger				
	Danger From Freezing of Exposed Flesh										

Subpart J—Adjustment of Work Schedules for Religious Observances

AUTHORITY: 5 U.S.C. 5550a.

§ 550.1001 Coverage.

This subpart applies to each employee in or under an executive agency as defined by section 105 of title 5, United States Code.

[43 FR 46288, Oct. 6, 1978, and 51 FR 23036, June 25, 1986]

§ 550.1002 Compensatory time off for religious observances.

(a) These regulations are issued pursuant to title IV of Pub. L. 95-390, enacted September 29, 1978. Under the law and these regulations, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

(b) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

(c) For the purpose stated in paragraph (b) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fracticns thereof. Appropriate records will be kept of compensatory overtime earned and used.

(d) The premium pay provisions for overtime work in Subpart A of Part 550 of Title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose.

[43 FR 46288, Oct. 6, 1978, as amended at 51 FR 23036, June 25, 1986]

Subpart K—Collection by Offset From Indebted Government Employees

AUTHORITY: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

SOURCE: 49 FR 27472, July 3, 1984, unless otherwise noted.

§ 550.1101 Purpose.

This subpart provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514 and by OPM to review and approve such agency regulations, and establishes procedural guidelines to recover debts from the current pay account of an employee when the employee's creditor and paying agencies are not the same.

§ 550.1102 Scope.

(a) *Coverage.* This subpart applies to agencies and employees defined by § 550.1103.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of FCCS.

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicity provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 550.1103 Definitions.

For purposes of this subpart—

Agency means (a) an Executive agency as defined in Section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department as defined in Section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

Paying agency means the agency employing the individual and authorizing the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[49 FR 27472, July 3, 1984, as amended at 51 FR 16670, May 6, 1986]

§ 550.1104 Agency regulations.

Under this subpart and 5 U.S.C. 5514, each creditor agency must issue regulations, subject to approval by the Office of Personnel Management (OPM), governing the collection of a debt by salary offset. Each agency is responsible for assuring that the regulations governing collection of internal debts are uniformly and consistently applied to all its employees. Agency regulations issued under authority of 5 U.S.C. 5514 must contain the following minimum provisions:

(a) *Applicability or scope.* Indicat whether regulations cover internal o Government-wide collections under U.S.C. 5514, or both.

(b) *Entitlement to notice, hearing written responses and decisions.* Identify when the employee is entitled t notice, when hearings will be offered when the employee is entitled to a response or decision after exercising his or her rights under § 5514 and this subpart, and if the hearing official's decision is not in the employee's favor or the employee chooses not to request a hearing, what other rights and remedies are available under the statutes or regulations governing the program that requires the collection to be made. Except as provided in paragraph (c) of this section, each employee from whom the creditor agency proposes to collect a debt under this subpart is entitled to receive from the creditor agency—

(1) A written notice as described in paragraph (d) of this section;

(2) The opportunity to petition for a hearing and, if a hearing is given, to receive a written decision from the official holding the hearing on the following issues:

(i) The determination of the creditor agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the creditor agency.

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) *Notification before deductions begin.* Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency or his designee provides the employee at least

30 days before any deduction, written notice stating at a minimum:

(1) The creditor agency's determination that a debt is owed, including the origin, nature, and amount of that debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay accont;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the creditor agency's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency; and documented in the creditor agency's files (4 CFR 102.2(e));

(7) The employee's right to a hearing conducted by an official arranged by the creditor agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, §§ 3729-3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under §§ 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(e) *Petitions for hearing.* (1) Prescribe the method and time period for petitioning for a hearing. Ordinarily, a hearing may be requested by filing a written petition addressed to the appropriate creditor agency official stating why the employee believes the determination of the agency concerning the existence or amount of the debt is in error.

(2) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(f) *Petitions for hearing made after time expires.* Prescribe the action to be taken on a petition for hearing made after the expiration of the period provided in the notice described in paragraph (d) of this section. Ordinarily a creditor agency should accept requests if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(g) *Form of hearings, written responses, and final decisions.* (1) Define the form and content of hearings, written responses, and written decisions to be provided when the employee exercises his or her rights under § 5514 and this subpart.

(2) The form and content of hearings granted under this subpart will depend on the nature of the transactions giving rise to the debts included within each debt collection program. Agencies should refer to 4 CFR 102.3(c) for information on hearing form and content.

(3) Written decisions provided after a request for hearing must, at a minimum, state the facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions, in light of the hearing, as to the employee's and/or creditor agency's grounds, the amount and validity of the alleged debt and, where applicable, the repayment schedule.

(h) *Method and source of deductions.* Identify the method and source of deductions. At a minimum, agency regulations must identify the method of collection as salary offset and the source of deductions as current disposable pay, except as provided in paragraphs (l) and (m) of this section.

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(j) *Duration of deductions.* Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump-sum where possible. However, if the employee is financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the ca may be, except as provided in pa graphs (l) and (m) of this section.

(k) *When deductions may begin.* Pr scribe when deductions will be sche uled to begin in internal agency colle tions.

(l) *Liquidation from final chec* Provide for offset under 31 U.S. 3716, if the employee retires or resig or if his or her employment or perio of active duty ends before collection the debt is completed, from subs quent payments of any nature (e.g final salary payment, lump-sum leav etc.) due the employee from th paying agency as of the date of separa tion to the extent necessary to liqu date the debt.

(m) *Recovery from other payment due a separated employee* Provide fo offset under 31 U.S.C. 3716 from late payments of any kind due the forme employee from the United States where appropriate, if the debt canno be liquidated by offset from any fina payment due the former employee as of the date of separation. (See 4 CFR 102.3.)

(n) *Interest, penalties, and administrative costs.* Provide for the assessment of interest, penalties, and administrative costs on debts being collected under this subpart. These charges and the waiving of them must be prescribed in accordance with 4 CFR 102.13.

(o) *Non-waiver of rights by payments.* Provide that an employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

(p) *Refunds.* (1) Provide for promptly refunding to the appropriate party, amounts paid or deducted under this subpart when—

(i) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(ii) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(2) Refunds do not bear interest unless required or permitted by law or contract.

§ 550.1105 Review and approval of agency regulations.

(a) *Initial OPM review of agency regulations.* (1) Creditor agencies must submit regulations to the Office of Personnel Management (OPM) for review in accordance with 5 U.S.C. 5514 and this subpart prior to publication of final regulations or prior to implementation, if intragency collection procedures are not published. Submissions must be for agency-wide and/or Government-wide collections.

(2) Creditor agency regulations must contain all provisions specified in § 550.1104. If agency regulations are incomplete, OPM will return them with information as to what must be done to obtain approval.

(b) *Proposed changes in salary offset regulations.* If a creditor agency proposes significant changes in the regulations covering provisions specified in § 550.1104, the proposed revisions must be submitted to OPM for review and approval prior to implementation.

(c) *Supplemental regulations.* When a creditor agency has issued approved regulations covering the provisions specified in § 550.1104, the agency may issue any supplemental regulations or instructions, consistent with its approved regulations, which are necessary for solely internal operations, without prior OPM approval.

§ 550.1106 Time limit on collection of debts.

Under 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that paragraph.

[51 FR 21325, June 12, 1986]

§ 550.1107 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of Part 581 of this chapter to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of Part 581 of this chapter to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

[51 FR 16670, May 6, 1986]

§ 550.1108 Requesting recovery when the current paying agency is not the creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment, and if the creditor agency wishes, the number and the commencing date of the installments (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing

the information specified in paragraphs (a) (1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in § 550.1104(1). The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(6) If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (See 31 U.S.C. 3716 and the FCCS.)

(b) *Responsibilities of paying agency*—(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt from a creditor agency, the paying agency must return the deb claim with a notice that procedure under 5 U.S.C. 5514 and this subpar must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.* (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

[51 FR 21325, June 12, 1986]

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

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AUTHORITY: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93-259 enacted April 8, 1974, 88 Stat. 55; 29 USC 204f.

Subpart A—General Provisions

SOURCE: 45 FR 85663, Dec. 30, 1980, unless otherwise noted.

§ 551.101 General.

(a) Section 3(e)(2) of the Fair Labor Standards Act of 1938, as amended, authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management to administer the provisions of the Act for all such employees, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority; the named groups of employees are specifically excluded from the Office of Personnel Management's administration.

(b) The Act provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(c) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

§ 551.102 Definitions.

In this part:

(a) "Act" means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(b) "Agency", for purposes of the Office of Personnel Management's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act; but does not include:

(1) The Library of Congress;

(2) The United States Postal Service;

(3) The Postal Rate Commission; or

(4) The Tennessee Valley Authority; all of which are subject to the administration of the Act by the Department of Labor, under Title 29, Code of Federal Regulations.

(c) "Employ" means to engage a person in an activity that is for the benefit of an agency, as defined for this part, and includes any hours of work that are suffered or permitted.

(d) "Employee" means a person who is employed:

(1) In an executive agency;

(2) As a civilian in a military department;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department; or

(4) In a unit of the legislative or judicial branch of the Government that has positions in the competitive service.

(e) "Suffered or permitted" work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

(f) "Trainee" means a person who does not meet the definition of "employee" in paragraph (d) of this section, and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a "trainee" and, therefore, is not an "employee" of th Government of the United States fo purposes of the Act:

(1) The training, even though it includes actual operation of the facilitie of the Federal activity, is similar t that given in a vocational school o other institution of learning;

(2) The training is for the benefit o the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

(g) "Volunteer" means a person who does not meet the definition of "employee" in paragraph (d) of this section, and who volunteers or donates his or her service the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

(h) "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Wake Island;

(9) Eniwetok Atoll;

(10) Kwajalein Atoll; and

(11) Johnston Island.

[45 FR 85663, Dec. 30, 1980, as amended at 51 FR 7426, Mar. 4, 1986]

§ 551.103 Coverage.

(a) Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is:

(1) Defined as an employee under section 2105 of title 5, United States Code;

(2) Appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;

(2) A trainee as defined in § 551.102(f); or

(3) A volunteer as defined in § 551.102(g).

§ 551.104 Administrative authority.

The Office of Personnel Management is the administrator of the provisions of the Act with respect to any person employed by an agency, except for the equal pay provisions contained in section 6(d) of the Act, which are administered by the Equal Employment Opportunity Commission.

Subpart B—Exemptions

Source: 51 FR 7426, Mar. 4, 1986, unless otherwise noted.

§ 551.201 Agency authority.

The employing agency shall exempt from the overtime provisions of the Act any employee who meets the exemption criteria of this subpart and such supplemental interpretations or instructions as shall be issued by the Office of Personnel Management.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency shall observe the principles that—

(a) Exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(b) The burden of proof rests with the agency that asserts the exemption.

(c) All employees who clearly meet the criteria for exemption must be exempted.

§ 551.203 Exemption of General Schedule employees.

(a) Any employee properly classified at GS-4 or below (or the equivalent level in other white collar pay systems) shall be nonexempt;

(b) Any employee properly classified at GS-5 through GS-10 (or the equivalent level in other white collar pay systems) shall be exempt only if the employee is an executive, administrative, or professional employee as defined in §§ 551.204, 551.205, and 551.206 of this subpart.

[51 FR 7426, Mar. 4, 1986, as amended at 53 FR 1740, Jan. 22, 1988]

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and regularly and customarily directs the work of at least three subordinate employees (excluding support employees) and meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. The primary duty requirement is met if the employee—

(1) Has authority to select or remove, and advance in pay and promote, or make any other status changes of subordinate employees, or has authority to suggest and recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) In addition to the primary duty criterion that applies to all employees, foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems), employees at the GS-7 through GS-9 level subject to section 207(k) of Title 29, United States Code, and employees classified at the GS-5 or GS-6 level (or equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

[53 FR 1332, Jan. 19, 1988, and 53 FR 1740, Jan. 22, 1988]

§ 551.205 Administrative exemption criteria.

An administrative employee is an advisor, assistance, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

(a) The employee's primary duty consists of work that—

(1) Significantly affects the formulation or execution of management policies or programs; or

(2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a mangement official.

(b) The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-today work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

§ 551.206 Professional exemption criteria.

A professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) The employee's primary duty consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.

(b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.

(c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) In addition to the primary duty criterion that applies to all employees, General Schedule exployees classified at GS-5 or GS-6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

§ 551.207 Foreign exemption.

(a) This section provides criteria for applying the "foreign exemption" contained in section 13(f) of the Act. An employee who is exempt under the foreign exemption is not subject to the minimum wage and overtime provisions of the Act. The exemption status of an employee to whom the foreign exemption is not applicable shall be determined under the general criteria contained in this subpart.

(b) Except as provided in § 551.208(d), an agency shall apply the foreign exemption to any employee who is permanently stationed in an "exempt area" as defined in § 551.102(h).

(c) An agency shall also apply the foreign exemption on a workweek basis to an employee on temporary duty who is not permanently stationed in an exempt area, but who performs *all* hours of work in a given workweek in an exempt area.

(d) The foreign exemption is not applicable to an employee permanently stationed in an exempt area for any given workweek in which the employee performs *any* hours of work in the United States or in a terrritory under the jurisdiction of the United States.

[51 FR 7426, Mar. 4, 1986. Redesignated at 53 FR 1740, Jan. 22, 1988]

§ 551.208 Application of the executive, administrative, and professional exemption criteria for periods of temporary duty.

(a) This section is not applicable when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. This section applies only when an employee is assigned to perform duties which are not included in the employee's representative workweek. For the period of any such temporary duty, the exemption criteria contained in §§ 551.202 through 551.206 of this subpart shall be applied using the procedures specified in this section.

(b) A nonexempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain nonexempt for the entire period of the termporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other age systems);

(3) The employee's primary duty for the period of temporary duty is exempt duty as defined in this subpart.

(c) Except as provided in § 551.208(e), an exempt employee who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

(1) The temporary duty exceeds 30 days;

(2) The employee occupies a permanent position, or is temporarily promoted to a position which is either—

(i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or

(ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) The employee's primary duty for the period of temporary duty is *not* exempt duty as defined in this subpart.

(d) An employee who becomes exempt under the criteria contained in § 551.208(b) shall be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt under the criteria contained in § 551.208(c) shall be considered nonexempt for the entire period of temporary duty.

(e) An exempt employee who is classified at GS-5 or GS-6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties which are not included in the employee's permanent position shall remain exempt *only* if the employee spends more than 80 percent of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(f) Notwithstanding any other provision of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists which threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. In such a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20 percent nonexempt work.

[51 FR 7426, Mar. 4, 1986. Redesignated and amended at 53 FR 1740, Jan. 22, 1988]

Subpart C—Minimum Wage Provisions

Basic Provision

§ 551.301 Minimum wage.

(a) Except as provided in § 551.311, an agency shall pay each of its employees wages at rates not less than the minimum wage specified in section 6(a)(1) of the Act for all hours of work as defined in Subpart D of this part.

(b) An employee has been paid in compliance with the minimum wage provisions of this subpart if the employee's hourly regular rate of pay, as defined in § 551.511(a) of this part, for the workweek is equal to or in excess of the rate specified in section 6(a)(1) of the Act.

[45 FR 85664, Dec. 30, 1980]

Subminimum Wage

§ 551.311 Subminimum wage.

An agency may, if it meets certain criteria published by the Office of Personnel Management, employ certain groups of less than fully productive employees (e.g., handicapped patient workers) at rates less than the minimum wage specified in section 6(a)(1) of the Act.

[45 FR 85664, Dec. 30, 1980]

Subpart D—Hours of Work

Source: 45 FR 85664, Dec. 30, 1980, unless otherwise noted.

General Provisions

§ 551.401 Basic principles.

(a) All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is "hours of work." Such time includes:

(1) Time during which an employee is required to be on duty;

(2) Time during which an employee is suffered or permitted to work; and

(3) Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.

(b) Except as provided in paragraph (c) of this section, paid periods of nonwork (e.g., leave, holidays, or excused absences) are not hours of work for the purpose of this part.

(c) Paid periods of nonwork (e.g., leave, holidays, or excused absences) are counted as hours of work for the purpose of this part for an employee who receives:

(1) Annual premium pay for standby duty under 5 CFR 550.141;

(2) Annual premium pay for administratively uncontrollable overtime work under 5 CFR 550.151; or

(3) Overtime pay for regularly scheduled overtime work, as defined in 5 CFR 550.103(p) and 610.102(g).

(d) Time that is considered hours of work under this part shall be used only to determine an employee's entitlement to minimum wages or overtime pay under the Act, and shall not be used to determine hours of work for pay administration under title 5, United States Code, or any other authority.

[45 FR 85664, Dec. 30, 1980, as amended at 52 FR 47687, Dec. 16, 1987, and 53 FR 27147, July 19, 1988]

§ 551.402 Agency responsibility.

(a) An agency is responsible for exercising appropriate controls to assure that only that work for which it intends to make payment is performed.

(b) An agency shall keep complete and accurate records of all hours worked by its employees.

APPLICATION OF PRINCIPLES IN RELATION TO NORMAL WORKDAY

§ 551.411 Workday.

(a) For the purposes of this part, "workday" means the period between the commencement of the principal activities that an employee is engaged to perform on a given day, and the cessation of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

(b) Any rest period authorized by an agency that does not exeed 20 minutes and that is within the workday shall be considered hours of work.

(c) *Bona fide* meal periods shall not be considered hours of work.

[45 FR 85664, Dec. 30, 1980, as amended at 48 FR 36805, Aug. 15, 1983]

§ 551.412 Preparatory or concluding activities.

(a)(1) If an agency reasonably determines that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per workday, the agency shall credit all of the time spent in that activity, including the 10 minutes, as hours of work.

(2) If the time spent in a preparatory or concluding activity is compensable as hours of work, the agency shall schedule the time period for the employee to perform that activity. An employee shall be credited with the actual time spent in that activity during the time period scheduled by the agency. In no case shall the time credited for the performance of an activity exceed the time scheduled by the agency. The employee shall be credited for the time spent performing preparatory or concluding activities in accordance with paragraph (b) of §551.521 of this part.

(b) A preparatory or concluding activity that is not closely related to the performance of the principal activities is considered a preliminary or postliminary activity. Time spent in preliminary or postliminary activities is excluded from hours of work and is not compensable, even if it occurs between periods of activity that are compensable as hours of work.

[48 FR 36805, Aug. 15, 1983]

APPLICATION OF PRINCIPLES IN RELATION TO OTHER ACTIVITIES

§ 551.421 Regular working hours.

(a) Under the Act there is no requirement that a Federal employee have a regularly scheduled administrative workweek. However, under title 5 United States Code, and Part 610 of this chapter, the head of an agency is required to establish work schedules for his or her employees. In determining what activities constitute hours of work under the Act, there is generally a distinction based on whether the activity is performed by an employee during regular working hours or outside regular working hours. For purposes of this part, "regular working hours" means the days and hours of an employee's regularly scheduled administrative workweek established under part 610 of this chapter.

[45 FR 85664, Dec. 30, 1980, as amended at 48 FR 36806, Aug. 15, 1983]

§ 551.422 Time spent traveling.

(a) Time spent traveling shall be considered hours of work if:

(1) An employee is required to travel during regular working hours;

(2) An employee is required to drive a vehicle or perform other work while traveling;

(3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

(b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section.

(c) An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, shall be credited with the lesser of:

(1) The actual travel time which is hours of work under this section; or

(2) The estimated travel time which would have been considered hours of work under this section had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

§ 551.423 Time spent on training or attending a lecture, meeting, or conference.

(a) Time spent in training, whether or not it is under the purview of Part 410 of this chapter, shall be administered as follows:

(1) Time spent in training during regular working hours shall be considered hours of work.

(2) Time spent in training outside regular working hours shall be considered hours of work if:

(i) The employee is directed to participate in the training by his or her employing agency; and

(ii) The purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position.

(3) Time spent in apprenticeship or other entry level training, or internship or other career related work study training, or training under the Veterans Readjustment Act (5 CFR Part 307) outside regular working hours shall not be considered hours of work, provided no productive work is performed during such periods.

(4) Time spent by an employee performing work for the agency during a period of training shall be considered hours of work.

(b) The following phrases contained in paragraph (a) of this section, are further clarified:

(1) "Directed to participate" means that the training is required by the agency and the employee's performance or continued retention in his or her current position will be adversely affected by nonenrollment in such training.

(2) Training "to improve the employee's performance * * * of his or her current position" is distinguished from upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

(c) Time spent by an employee within an agency's allowance of preparatory time for attendance at training shall be considered hours of work if such preparatory time is:

(1) During an employee's regular working hours; or

(2) Outside the employee's regular working hours, and the purpose of the training meets the requirements of paragraph (a)(2) of this section.

(d) Time spent attending a lecture, meeting, or conference shall be considered hours of work if attendance is:

(1) During an employee's regular working hours; or

(2) Outside an employee's regular working hours, and

(i) The employee is directed by an agency to attend such an event; or

(ii) The employee performs work for the benefit of the agency during such attendance.

§ 551.424 Time spent adjusting grievances or performing representational functions.

(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency's premises shall be considered hours of work.

(b) "Official time" granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

§ 551.425 Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

(1) The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;

(2) The time spent receiving medical attention occurs during the employee's regular working hours; and

(3) The employee receives the medical attention on the agency's premises, or at the direction of the agency at a medical facility away from the agency's premises.

(b) Time spent taking a physical examination that is required for the employee's continued employment with the agency shall be considered hours of work.

§ 551.426 Time spent in charitable activities.

Time spent working for public or charitable purposes at an agency's request, or under an agency's direction or control, shall be considered hours of work. However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.

SPECIAL SITUATIONS

§ 551.431 Time spent on standby duty or in an on-call status.

(a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:

(1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) The employee, although not restricted to the agency's premises:

(i) Is restricted to his or her living quarters or designated post of duty;

(ii) Has his or her activities substantially limited; and

(iii) Is required to remain in a state of readiness to perform work.

(b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

(1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

§ 551.432 Sleep time.

(a) Except as provided in paragraph (b) of this section, *bona fide* sleep time that fulfills the following conditions shall not be considered hours of work if:

(1) The tour of duty is *24 hours or more;*

(2) During such time there are adequate facilities such that an employee may usually enjoy an uninterrupted period of sleep; and

(3) There are at least 5 hours available for such time during the sleep period.

(b) For employees engaged in fire protection activities or law enforcement activities, the exclusion of sleep time is appropriate for tours of duty *of more than 24 hours* only. However, paragraphs (a)(2) and (a)(3) of this section still apply to employees in these activities.

(c) Not more than 8 hours in a 24-hour period shall be considered sleep time.

(d) If sleep time is interrupted by a call to duty, the time spent on duty is considered hours of work.

Subpart E—Overtime Pay Provisions

SOURCE: 45 FR 85665, Dec. 30, 1980, unless otherwise noted.

BASIC PROVISIONS

§ 551.501 Overtime pay.

(a) Except as otherwise provided in this subpart, an agency shall compensate an employee who is not exempt under Subpart B of this part for all hours of work in excess of 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay.

(b) An employee's "workweek" is a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to Part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

(c) The maximum limitation on an employee's aggregate rate of pay under § 550.105 of this chapter does not apply to overtime pay due the employee under this subpart.

OVERTIME PAY COMPUTATIONS

§ 551.511 Hourly regular rate of pay.

(a) An employee's "hourly regular rate" is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.

(b) "Total remuneration" includes all remuneration for employment paid to, or on behalf of, an employee except:

(1) Payments as rewards for service the amount of which is not measured by or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by an agency);

(2) Payments for periods during which no work is performed (e.g., leave, holidays, or excused absences) for all employees except those in receipt of—

(i) Annual premium pay for standby duty under 5 CFR 550.141;

(ii) Annual premium pay for administratively uncontrollable overtime work under 5 CFR 550.151; or

(iii) Overtime pay for regularly scheduled overtime work, as defined in 5 CFR 550.103(p) and 610.102(g);

(3) Reimbursements for travel
penses, or other similar expenses,
curred by an employee in furthera
of an agency's interest, which are
related to hours of work;

(4) Payments made in recognition
services performed during a gi
period, if both the fact that paym
is to be made and the amount of
payment are determined at the s
discretion of the agency (e.g., incent
awards for outstandingly high-qual
work);

(5) Contributions by an agency t
fund for retirement, insurance,
similar benefits;

(6) Extra compensation provided
a premium rate paid for hours of wo
performed by an employee in excess
eight in a day, or in excess of t
normal workweek applicable to t
employee;

(7) Extra compensation provided
a premium rate paid for hours of wo
performed by an employee on
Sunday or a holiday where such pr
mium rate is at least one and one-ha
times the employee's rate of pay f
work performed in nonovertime hou
on other days; or

(8) Extra compensation provided
a premium rate paid for hours of wo
performed by an employee outside h
or her regular working hours, whe
such premium rate is at least one an
one-half times the employee's rate
pay for work performed in nonove
time hours.

[45 FR 85665, Dec. 30, 1980, as amended
52 FR 47688, Dec. 16, 1987, and 53 FR 2714
July 19, 1988]

§ 551.512 Overtime pay entitlement.

(a) An employee's overtime entitle
ment under this subpart includes:

(1) The straight time rate of pa
times all overtime hours worked; plu

(2) One-half times the employee'
hourly regular rate of pay times a
overtime hours worked.

(b) An employee's "straight tim
rate of pay" is equal to the employee'
rate of pay for his or her position (ex
clusive of any premiums or differen
tials) except for an employee who i
authorized annual premium pay unde
§ 550.141 or § 550.151 of this chapter
For an employee who is authorized

annual premium pay, straight time rate of pay is equal to basic pay plus annual premium pay divided by the hours for which the basic pay plus annual premium pay are intended.

(c) An employee has been paid in compliance with the overtime pay provisions of this subpart only if the employee has received pay at a rate at least equal to the employee's straight time rate of pay for all nonovertime hours of work in the workweek.

§ 551.513 Payment of greater overtime pay entitlement.

An employee entitled to overtime pay under this subpart and overtime pay under § 550.113 of this chapter, or under any other authority, shall be paid under whichever authority provides the greater overtime entitlement in the workweek. This overtime pay shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under title 5, United States Code, or any other authority.

FRACTIONAL HOURS OF WORK

§ 551.521 Fractional hours of work.

(a) An employee shall be compensated for every minute of regular overtime work.

(b) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional ovetime work under this subpart. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.

[48 FR 36806, Aug. 15, 1983]

COMPENSATORY TIME OFF

§ 551.531 Compensatory time off.

(a) An agency may grant an employee compensatory time off in lieu of overtime pay under appropriate statutory authority, to be taken during the same workweek in which the overtime work was performed.

(b) An employee who earns an overtime pay entitlement under this subpart may be granted compensatory time off in a subsequent workweek provided:

(1) The employee earns overtime entitlement under § 550.113 of this chapter that is equal to or greater than the employee's overtime entitlement under this subpart; and

(2) The employee makes a written request to substitute compensatory time off for overtime payment.

SPECIAL OVERTIME PAY PROVISIONS

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act.

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in § 551.432 of this part.

(c) Each agency shall establish the "work period" to be used for application of section 7(k) of the Act. The work period shall be at least seven days and not more than 28 days.

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES

Subpart A—General Provisions

Sec.
572.101 Agency authority.
572.102 Agencies' discretion in paying travel and transportation expenses.

Subpart B—Shortage Determinations for Positions above Grade GS-15 (or Equivalent)

572.201 Determination of manpower shortage for positions at level GS-16 and above (or equivalents).
572.202 Senior Executive Service: New appointees.

Sec.

Subpart C—Shortage Determinations for Positions at Grades GS-15 and Below (or Equivalents)

572.301 Determination of shortage for positions at grades GS-15 and below (or equivalents).

AUTHORITY: 5 U.S.C. 5723.

Subpart A—General Provisions

§ 572.101 Agency authority.

Subject to the provisions of Subparts B and C of this part, an agency may determine that a shortage of qualified candidates exists for particular positions and that payment of appointees' travel and transportation expenses to the first post of duty is appropriate as a recruiting incentive. An agency may exercise this authority only in accordance with the requirements set out in this part and with standards of performance established by the Office of Personnel Management.

[52 FR 28817, Aug. 4, 1987]

§ 572.102 Agencies' discretion in paying travel and transportation expenses.

Payment of travel and transportation expenses for any individual appointee will be at the discretion of the employing agency. A determination by one agency that a shortage of eligibles exists for a particular title, series, grade and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not require a like determination in connection with future vacancies. In deciding whether to pay travel and transportation expenses for an individual appointee, an agency may consider such factors as availability of funds and availability of well-qualified internal candidates, as well as the shortage criteria set out in this part.

[52 FR 28817, Aug. 4, 1987]

Subpart B—Shortage Determinati
for Positions Above GS-15
Equivalent)

**§ 572.201 Determination of manpo
shortage for positions at level GS
and above (or equivalents).**

(a) The head of a department
agency shall have the responsibil
for determining whether a manpow
shortage exists for individual positio
in level GS-16 and above (or equi
lents). In making such determinati
the head shall consider the speci
items and guidance material in t
Federal Personnel Manual.

(b) A determination that a manpo
er shortage exists is required before
department or agency may pay trav
and transportation expenses for n
appointees under section 5723 of ti
5, United States Code, and in accor
ance with the Federal Travel Regul
tions, FPMR 101-7.

[44 FR 54694, Sept. 21, 1979. Redesignat
at 52 FR 28817, Aug. 4, 1987]

**§ 572.202 Senior Executive Service: N
appointees.**

A department or agency may p
travel and transportation expenses f
new appointees under section 5723
title 5, United States Code.

[44 FR 54694, Sept. 21, 1979. Redesignat
at 52 FR 28817, Aug. 4, 1987]

Subpart C—Shortage Determinatio
for Positions at Grades GS-
and Below (or Equivalents)

**§ 572.301 Determination of shortage f
positions at grades GS-15 and belo
(or equivalents).**

(a) *Continuing determinations.* Th
Office of Personnel Management ha
determined that a shortage of qual
fied candidates exists for the position
listed below. Agencies may pay trave
and transportation expenses to firs
post of duty for appointees to thes
positions without making a specifi
shortage determination, assumin
other legal requirements are met.

(1) Positions for which special pa
rates established pursuant to 5 U.S.C
5303 are in effect;

(2) Positions filled by members of the National Defense Executive Reserve program who are called to duty in the event of a national emergency; and

(3) Positions filled under direct-hire authority, when that authority covers all positions in a specific series, grade, and geographic location. Payment of travel and transportation expenses is not authorized under this paragraph when direct-hire authority is granted only for certain candidates for the positions (e.g., candidates attaining a predetermined cutoff score; outstanding scholars).

(b) *Other determinations.* An agency may pay appointees' travel and transportation expenses for positions other than those listed above only when the agency determines that there is a shortage of well qualified candidates for the positions. The criteria in paragraphs (b)(1) and (2) of this section will be used in determining whether a shortage exists for a particular position and whether the shortage will also exist for future vacancies in the same series, grade, and location. Each agency will make the reasons for its shortage determination(s) regarding particular positions a matter of record and will furnish information about those reasons to an employee or applicant on request.

(1) *Reasonable recruitment effort.* Appropriate recruiting efforts for positions in the competitive service will include requests for referral of eligibles from the appropriate competitive examination, contact with the State Employment Service office or offices serving the locality concerned, and, where appropriate, contact with academic institutions, technical and professional organizations, or other organizations likely to produce qualified candidates for the positions. Recruiting for positions in the excepted service will be in accordance with the agency's objectives and staffing procedures, but must include contacts with academic institutions, or State Employment Service offices, or other organizations appropriate for the particular positions. The possibility of relieving a shortage for a certain type of position through broader publicity and recruitment will be considered in determining whether a shortage of qualified candidates exists.

(2) *Internal efforts.* When determining whether a shortage of qualified candidates exists for any position, an agency will consider the number and quality of candidates available within its current workforce. Consideration will also be given to efforts to relieve the shortage situation through such techniques as job engineering, training programs for under utilized employees, or automation.

(3) *Duration of the shortage.* Shortage determinations will be effective for a period not to exceed 3 years and may be renewed by the agency only upon a showing that the criteria of this paragraph are still met. Unless there is evidence that the shortage of qualified candidates for particular positions is continuing, the shortage determination will terminate when the current vacancy or vacancies in the positions are filled. The length of time active recruiting has been conducted for the position(s), the current and projected vacancy rate, and the number of declinations will be considered in determining whether the shortage of qualified candidates for particular positions is continuing.

[52 FR 28817, Aug. 4, 1987]

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

Subpart A—Purpose and Definitions

Sec.
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APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

AUTHORITY: 42 U.S.C. 659, 661-662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

SOURCE: 45 FR 85667, Dec. 30, 1980, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support and/or make alimony payments. Section 666 (a)(1) and (b) of title 42 of the United States Code requires States to enact laws mandating the use of procedures for the withholding from income of amounts payable as support. The purpose of this part is to implement the objectives of sections 659 and 666 (a)(1) and (b) as they pertain to the executive branch of the Government of the United States.

[55 FR 1355, Jan. 16, 1990]

§ 581.102 Definitions.

In this part: (a) *The executive branch of the Government of the United States* means all "governmental entities" as defined in this section, including therein the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

(b) *Governmental entity* means each department, both civilian and military, agency, independent establishment, or instrumentality of the executive branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature of the executive branch, and the governments of the District of Columbia and of the territories and possessions of the United States.

(c) *Private person* means a person who does not have sovereign or other special immunity or privilege which causes that person not be be subject to legal process.

(d) *Child support* means periodic payments of funds for the support and maintenance of a child or children, and, subject to and in accordance with State or local law, includes, but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children. Child support also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as child support under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) *Alimony* means periodic payments of funds for the support and maintenance of a spouse or former spouse, and, subject to and in accordance with State or local law, includes, but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support. Alimony also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as alimony under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. This term does not include any payment or transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses. (See instead 5 U.S.C. 8345(j) and 5 CFR part 831, subpart Q.)

(f) *Legal process* means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support and/or make alimony payments.

(g) *Legal obligation* means an obligation to pay alimony and/or child support that is enforceable under appropriate State or local law. A legal obligation may include current as well as past due alimony and/or child support debts depending on the law in the jurisdiction from which the legal process was issued.

(h) *Obligor* means an individual having a legal obligation to pay alimony and/or child support.

(i) *Remuneration for employment* means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to, those items set forth in § 581.103.

(j) *Party* means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the right to receive such payment or payments.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1355, Jan. 16, 1990]

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

(1) Saved pay;

(2) Retained pay;

(3) Night differentials;

(4) Sunday and holiday premium pay;

(5) Overtime pay;

(6) Standby pay;

(7) Environmental differentials;

(8) Hazardous duty pay;

(9) Tropical differentials;

(10) Recruitment incentives;

(11) Equalization allowance;

(12) Any payment in consideration of accrued leave;

(13) Severance pay;

(14) Sick pay;

(15) Physicians comparability allowances;

(16) Special pay for physicians and dentists;

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;

(18) Merit pay;

(19) Incentive pay;

(20) Cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion); and

(22) Senior Executive Service rank and performance awards.

(23) Moneys due for the services of a deceased employee obligor, including:

(i) Overtime or premium pay;

(ii) Amounts due as refunds of pay deductions for United States savings bonds;

(iii) Payments for accumulated and current accrued annual or vacation leave as provided for in section 5581 of title 5 of the United States Code;

(iv) Retroactive pay as provided for in section 5344(b)(2) of title 5 of the United States Code; and

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due as set forth in § 581.104(i).

(b) For the personal service of an obligor in the uniformed services of the United States:

(1) Basic pay (including service academy cadet and midshipmen pay);

(2) Special pay (including enlistment and re-enlistment bonuses);

(3) Lump sum reserve bonus;

(4) Continuation pay for physicians and dentists;

(5) Special pay for physicians, dentists, optometrists, and veterinarians;

(6) Incentive pay;

(7) Variable incentive pay;

(8) Inactive duty training pay;

(9) Administrative duty pay;

(10) Academy official pay (other than personal money allowances);

(11) Any payments made in consideration of accrued leave (basic pay portion only);

(12) Readjustment pay;

(13) Disability retired pay;

(14) Severance pay (including disability severance pay); and

(15) Cash awards (NOAA Corps).

(c) For obligors generally. (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter
chapter 7 of title 42 of the Ur
States Code (Social Security Act)
by chapter 9 of title 45 of the Ur
States Code (Railroad Retiren
Act) or any other system, plan
fund established by the United St
(as defined in section 662(a) of titl
of the United States Code) which
vides for the payment of:

(i) Pensions;

(ii) Retirement benefits;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' b
fits when payable to the obligor;

(2) Refunds of retirement contr
tions where an application has b
filed;

(3) Employee contributions and C
ernment contributions to the oblig
Thrift Savings Fund account in
cordance with section 8437(e) of tit
of the United States Code;

(4) Amounts received under any F
eral program for compensation
work injuries; and

(5) Benefits received under
Longshoremen's and Harbor Work
Compensation Act.

(6) Exceptions. Remuneration wo
not include:

(i) Any payment as compensation
death, including any lump sum de
benefit under any Federal program;

(ii) Any payment under any Fede
program established to provide "bl
lung" benefits;

(iii) Any payment by the Depa
ment of Veterans Affairs as pensi
or

(iv) Any payment by the Depa
ment of Veterans Affairs as compen
tion for a service-connected disabil
or death, except any compensati
paid by the Department of Veter
Affairs to a former member of
Armed Forces who is in receipt of
tired or retainer pay if such forn
member has waived a portion of h
her retired pay in order to rece
such compensation. In this case, or
that part of the Department of Vet
ans Affairs payment that is in lieu
the waived retired/retainer pay is su
ject to garnishment. Payments of d
ability compensation by the Depa
ment of Veterans Affairs to an indiv
ual whose entitlement to disabil

compensation is greater than his/her entitlement to retired pay, and who has waived all of his/her retired pay in favor of disability compensation, are not subject to garnishment under this part.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1356, Jan. 16, 1990]

§ 581.104 Moneys which are not subject to garnishment.

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;

(b) Payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501-562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under title 26 of the United States Code;

(d) Grants;

(e) Fellowships;

(f) Veterans' educational assistance payments under section 1651 et seq., of title 38 of the United States Code;

(g) Contracts, except where the contractor recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:

(1) In the case of civilian employees:

(i) Uniform allowances;

(ii) Travel and transportation expenses (including mileage allowances);

(iii) Relocation expenses;

(iv) Storage expenses;

(v) Post differentials;

(vi) Foreign areas allowances;

(vii) Education allowances for dependents;

(viii) Separate maintenance allowances;

(ix) Post allowances and supplementary post allowances;

(x) Home service transfer allowances;

(xi) Quarters allowances;

(xii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;

(xiii) Remote worksite allowance; and

(xiv) Per diem allowances.

(2) In the case of members of the uniformed services: (i) Position pay (Navy only);

(ii) Basic allowance for quarters;

(iii) Basic allowance for subsistence;

(iv) Station allowances;

(v) Armed Forces health professions scholarship stipends;

(vi) Public Health Service scholarship stipends;

(vii) Travel and transportation allowances;

(viii) Dislocation allowances;

(ix) Family separation allowances;

(x) ROTC subsistence allowance;

(xi) Allowance for recruiting expenses;

(xii) Education allowances for dependents;

(xiii) Clothing allowances for enlisted personnel;

(xiv) Uniform allowances; and

(xv) Personal money allowances for General and Flag officers, and for the Surgeon General of the United States.

(i) Moneys due a deceased employee obligor where the amounts are:

(1) Reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including; (i) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;

(ii) Allowances on change of official station;

(iii) Quarters allowances; and

(iv) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(2) Amounts due for payment of cash awards for employees' suggestions.

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1356, Jan. 16, 1990]

§ 581.105 Exclusions.

In determining the amount of any "moneys due from, or payable by, the United States" to any individual, there shall be excluded amounts which:

(a) Are owed by the individual to the United States, except where the obligor's debt is for child support and the amount owed the United States results from an income tax lien or levy under section 6331 of title 26 of the United States Code;

(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:

(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(2) Federal employment taxes;

(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(4) Fines and forfeitures ordered by a court-martial or by a commanding officer; and

(5) Amounts deducted for Medicare;

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1356, Jan. 16, 1990]

§ 581.106 Future payments.

Moneys paid by a governmental entity which may be due and payable to an individual at some future date, shall not be considered due the individual unless and until all of the conditions necessary for payment of the moneys to the individual have been met, including, but not limited to, the following conditions which might apply:

(a) Retirement;

(b) Resignation from a position in the Federal service; or

(c) Application for payment of moneys by the individual.

Subpart B—Service of Process

§ 581.201 Agent to receive process.

(a) Appendix A to this part lists agents designated to accept service of process.

(b) The head of each governmental entity shall submit to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, for publication in Appendix A to this part, the following information concerning the agent(s) designated to accept service of process:

(1) Title;

(2) Mailing address;

(3) Telephone number; and

(4) Geographical area or region, if applicable.

(c) United States Attorneys are not considered appropriate agents to accept service of process.

[45 FR 85667, Dec. 30, 1980, as amended at 55 FR 1356, Jan. 16, 1990]

§ 581.202 Service of process.

(a) A party using this part shall serve on the designated agent of the governmental entity which has moneys due and payable to the obligor, legal process which names the governmental entity as the garnishee.

(b) Service of legal process brought for the enforcement of an obligation to provide child support and/or alimony shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the appropriate agent designated in Appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent. However, valid service is not accomplished until the legal process is received in the office of the designated agent.

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.202(d) and/or (e), the process must be accompanied by a certified copy of the court order or other document establishing such legal obligation(s).

(d) Where the State or local law provides for the issuance of legal process without a support order, such other documentation establishing that it was brought to enforce legal obligation(s) defined in § 581.102(d) and/or (e) must be submitted.

(e) In order for the party who caused the legal process to be served to receive the additional five (5) percent provided for in either § 581.402(a) or (b), it must appear on the face of the legal process that the process was brought for the enforcement of a support order for a period which is twelve (12) weeks in arrears, or a certified copy of the support order, or other evidence acceptable to the head of the governmental entity, establishing this fact, must be submitted.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1356, Jan. 16, 1990]

§ 581.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the governmental entity named. Therefore, the following identifying information about the obligor, if known, is requested:

(1) Full name;

(2) Date of birth;

(3) Employment number, social security number, Department of Veterans Affairs claim number, or civil service retirement claim number;

(4) Component of the governmental entity for which the obligor works, and the official duty station or worksite; and

(5) Status of the obligor, e.g., employee, former employee, or annuitant.

(b) If the information submitted is not sufficient to identify the obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time, an attempt should be made to inform the party who caused the legal process to be served, or the party's representative, that it will not be honored unless adequate identifying information is supplied.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1357, Jan. 16, 1990]

Subpart C—Compliance With Process

§ 581.301 Suspension of payment.

Upon proper service of legal process, together with all supplementary documents and information as required by §§ 581.202 and 581.203, the head of the governmental entity, or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment and shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

[48 FR 26280, June 7, 1983]

§ 581.302 Notification of obligor.

(a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

(1) That such process has been served, including a copy of the legal process, and, if submitted, such other documents as may be required by § 581.202;

(2) Of the maximum garnishment limitations set forth in § 581.402, with a request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(3) That by submitting supporting affidavits or other necessary documentation, the obligor consents to the disclosure of such information to the garnishor; and

(4) Of the percentage that will be deducted if he/she fails to submit the documentation necessary to enable the governmental entity to respond to the legal process within the time limits set forth in § 581.303.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. 501 *et seq.*).

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within thirty (30) calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. The agent shall also respond within this time period to interrogatories which accompany legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within thirty (30) calendar days after receipt: *Provided*, That the document(s) required by § 581.202(c) have been presented.

§ 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to § 581.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made by him/her in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, a governmental entity would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

§ 581.305 **Honoring legal process.**

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part; or

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity.

(b) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended; i.e., moneys shall continue to be withheld, but these amounts shall be retained by the governmental entity until the entity is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

(c) Under the circumstances set forth in § 581.305 (a) or (b), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity shall inform the party who caused the legal process to be served, or the party's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(d) In the event that a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, then the moneys shall be available to satisfy such processes on a first-come, first-served basis: *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(e) Neither the United States, any disbursing officer, nor governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. However, where a governmental entity negligently fails to comply with legal process, the United States shall be liable for the amount that the governmental entity would have paid, if the legal process had been properly honored.

(f) Governmental entities affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored to the extent that the legal process may be satisfied during the next disbursement cycle within the limits set forth in § 581.402. The fact that the legal process may have expired during this period would not relieve the governmental entity of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the entity to the obligor, the entity shall follow the procedures set forth in § 581.306.

(g) If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

(h) A failure by the party bringing the garnishment action to comply with the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act by itself shall not be a valid basis for a governmental entity to refuse to comply with legal process.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1357, Jan. 16, 1990]

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the governmental entity, the entity shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment, are due from, or payable by, the governmental entity to the named individual.

(b) Where it appears that remuneration for employment is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, the remuneration will be unavailable, if that information is known by the governmental entity.

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court or other authority that issued the legal process, that the payments are being discontinued. In cases where the obligor has retired, or separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employee's Compensation Act, and where this information is known by the entity, the entity shall provide the party with the designated agent for the new disbursing governmental entity. If the employee obligor will be employed in the private sector and the governmental entity knows the name and/or address of the new employer, the governmental entity will provide the party with this information.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26281, June 7, 1983; 55 FR 1357, Jan. 16, 1990]

§ 581.307 Compliance with legal process requiring the payment of attorney fees, interest, and/or court costs.

Before complying with legal process that requires withholding for the payment of attorney fees, interest, and/or court costs, the governmental entity must determine that the legal process meets both of the following requirements:

(a) The legal process must expressly provide for inclusion of attorney fees, interest, and/or court costs as (rather than in addition to) child support and/or alimony payments;

(b) The awarding of attorney fees, interest, and/or court costs as child support and/or alimony must be within the authority of the court, authorized official, or authorized State agency that issued the legal process. It will be deemed to be within the authority of the court, authorized official, or authorized State agency to award attorney fees as child support and/or alimony if such order is not in violation of or inconsistent with State or local law, even if State or local law does not expressly provide for such an award.

[55 FR 1357, Jan. 16, 1990]

Subpart D—Consumer Credit Protection Act Restrictions

§ 581.401 Aggregate disposable earnings.

The "aggregate disposable earnings", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor's remuneration for employment less those amounts deducted in accordance with § 581.105.

§ 581.402 Maximum garnishment limitations.

Pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(a) Fifty (50) percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek. An obligor shall be considered to be supporting a spouse and/or dependent child only if the obligor provides over half of the spouse's and/or dependent child's support.

(b) Sixty (60) percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child with respect to whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek.

(c) Where, under § 581.302(a)(2), an obligor submits evidence that he/she is supporting a second spouse and/or child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as to the court, or other authority, together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26281, June 7, 1983]

Subpart E—Implementation by Governmental Entities

§ 581.501 Rules, regulations, and directives by governmental entities.

Appropriate officials of all governmental entities shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

[This appendix lists the agents designated to accept legal process for the executive branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. DEPARTMENTS

DEPARTMENT OF AGRICULTURE

General Counsel, Department of Agriculture, 14th & Independence Ave., SW., Washington, DC 20250; (202) 447-3351.

DEPARTMENT OF COMMERCE

1. For employee obligors in the Office of the Secretary, Economic Development Administration, Bureau of Economic Analysis, Minority Business Development Agency, National Technical Information Service, National Telecommunications and Information Administration, Bureau of Export Administration, and United States Travel and Tourism Administration: Personnel Officer, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-3827.

2. Bureau of the Census: Chief, Personnel Employment Branch, Room 3254, FOB #3, Washington, DC 20230, (301) 763-1520.

3. National Oceanic and Atmospheric Administration: Director of the Office of Administration, National Oceanic and Atmospheric Administration, Room 6863, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-8900.

4. Patent and Trademark Office: Chief, Employee Relations Branch, Suite 225, 2101 Crystal Plaza Arcade, Arlington, VA 22202, (703) 557-3643.

5. National Bureau of Standards: Personnel Officer, Personnel Office, Room A-123, Administration Building, Gaithersburg, MD 20899, (301) 975-3000.

6. International Trade Administration: Director, Personnel Management Division, Room 4222, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-1533.

7. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained: Director of Personnel, Department of Commerce, Room 5001, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-4807.

DEPARTMENT OF DEFENSE

Army

a. Civilian employees in Germany: Commander, 266th Theater Finance Corps, Attention: AEUCF-CPF, APO New York 09007-0137, 049-6221-57-8911, Autovon: 370-8911.

b. Nonappropriated fund civilian employees of the Army Post Exchanges: Army and Air Force Exchange Service, Attention: CM-G-RI, P.O. Box 650038, Dallas, TX 75265, (214) 780-2005 or (214) 780-3111.

c. All other Army personnel: Commander, Army Finance and Accounting Center, Attention: FINCL-G, Indianapolis, IN 46249-0160, (317) 542-2155.

Navy

All personnel: Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2087, (216) 522-5301.

Marine Corps

All personnel: Commanding Officer, Marine Corps Finance Center (Code OC), Kansas City, MO 64197-0001, (816) 926-7103.

Air Force

1. Active duty, Reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279-5000, (303) 370-7524.

2. Nonappropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: CM-G-RI, P.O. Box 650038, Dallas, TX 75236-0038, (214) 780-2005 or (214) 780-3111.

3. Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB, TX 78150, (516) 652-6691.

Defense Advance Research Project Agency

Air Force District of Washington, Accounting and Finance Office, Attention: 15DA, Washington, DC 20332-5260, (202) 767-4211.

Defense Communications Agency

General Counsel or Deputy General Counsel, Office of the General Counsel (Code 105), Defense Communications Agency, Washington, DC 20305, (202) 692-2009.

Defense Contract Audit Agency

Director of Personnel, Defense Contract Audit Agency Cameron Station, Alexandria, VA 22304-6178, (202) 274-7325.

Defense Intelligence Agency

General Counsel, Defense Intelligence Agency, The Pentagon, Washington, DC 20340-1029, (202) 697-3945.

Defense Investigative Service

Deputy Director (Resources), Defense Investigative Service, 1900 Half Street SW., Washington, DC 20324-1700, (202) 475-1311.

Defense Logistics Agency

Accounting & Finance Officer (DCSC-CF), Defense Construction Supply Center, Columbus, OH 43216-5000, (614) 238-3161

Accounting & Finance Officer (DESC-CF), Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444-5000, (513) 296-6415

Command Security Officer, Defense General Supply Center (DGSC-I), Richmond, VA 23297-5000, (804) 275-4751

Accounting & Finance Officer (DPSC-ZA), Defense Personnel Support Center, 2800

South 20th Street, Philadelphia, PA 19101-8419, (215) 952-2741

Accounting & Finance Officer (DDMP-BD), Defense Depot Mechanicsburg, Mechanicsburg, PA 17055-0789, (717) 790-5099

Accounting & Finance Officer (DDMT-FD), Defense Depot Memphis, 2163 Airways Boulevard, Memphis, TN 38114-5297, (901) 744-6541

Accounting & Finance Officer (DDOU-CF), Defense Depot Ogden, Ogden, UT 84407-5000, (801) 399-7358

Accounting & Finance Officer (DDTC-GD), Defense Depot Tracy, S. Chrisman Road, Tracy, CA 95376-5000, (209) 832-9259

Accounting & Finance Officer (DASC-F), Cameron Station, Alexandria, VA 22304-6130, (202) 274-6108

Accounting & Finance Officer (DCASR-ATL-CF), Defense Contract Administration Services Region, Atlanta, 805 Walker Street, Marietta, GA 30060-2789, (404) 429-6369

Accounting & Finance Officer (DCASR-BOS-CF), Defense Contract Administration Services Region, Boston, 495 Summer Street, Boston, MA 02210-4335, (617) 429-4392

Accounting & Finance Officer (DCASR-CHI-CF), Defense Contract Administration Services Region, Chicago, O'Hare International Airport, 6400 North Mannheim Road, P.O. Box 66475, Chicago, IL 60666-0475, (312) 694-6535

Accounting & Finance Officer (DCASR-CLE-CA), Defense Contract Administration Services Region, Cleveland, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199-2064, (216) 552-5490

Accounting & Finance Officer (DCASR-DAL-CF), Defense Contract Administration Services Region, Dallas, 1200 Main Street, Dallas, TX 75202-4399, (214) 670-1350

Accounting & Finance Officer (DCASR-LA-CF), Defense Contract Administration Services Region, Los Angeles, 222 N. Sepulveda Boulevard, El Segundo, CA 90245-4320, (213) 335-4002

Accounting & Finance Officer (DCASR-NY-CF), Defense Contract Administration Services Region, New York, 201 Varick Street, New York, NY 10014-4811, (212) 807-3148

Accounting & Finance Officer (DCASR-STL-CF), Defense Contract Administration Services Region, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101-1194, (314) 263-6560

Defense Mapping Agency

1. For employees of the DMA Combat Support Center, the DMA Hydrographic/Topographic Center, the Defense Mapping School, and Headquarters: Associate General Counsel, DMA Hydrographic/Topographic Center, 6500 Brookes Lane, Washington, DC 20315-0030, (202) 227-2268.

2. For employees of the DMA Aerospace Center: Associate General Counsel, DMA Aerospace Center, 3200 South Second Street, St. Louis, MO 63118-3399, (314) 263-4501.

3. For employees of the DMA Reston Center, the DMA Systems Center, and the DMA Telecommunications Services Center: Associate General Counsel, DMA Systems Center, 12100 Sunset Hills Road, Suite 200, Reston, VA 22090-3207, (703) 487-8106.

Defense Nuclear Agency

1. For employees at Kirtland AFB, New Mexico: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279-5000, (303) 370-7524.

2. For all other employees: General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398, (703) 325-7681.

Uniformed Services University of the Health Sciences

Director, Personnel/Manpower, Civilian Personnel, 4301 Jones Bridge Road, Bethesda, MD 20814-4799; (202) 295-3081.

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Departments, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

DEPARTMENT OF EDUCATION

Assistant General Counsel, Division of Business and Administrative Law, Room 4091, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202, (202) 732-2690

DEPARTMENT OF ENERGY

Power Administrations

1. Alaska Power Administration: Administrator, Alaska Power Administration, Department of Energy, P.O. Box 020050, Juneau, AK 99802-0050; (907) 586-7405.
2. Bonneville Power Administration: Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 N.E. 11th Avenue, Portland, OR 97232; (503) 230-3203.
3. Southeastern Power Administration: Chief, Payroll Branch, Department of Energy, MA-33.31, Room E-261, GTN Building, Washington, DC 20545; (301) 353-4012.
4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O.

Box Drawer 1619, Tulsa, OK 74101; (918) 581-7426.

5. Western Area Power Administration: General Counsel, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231-1529.

Field Offices

1. Albuquerque Operations Office: Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (505) 844-7265.
2. Chicago Operations Office: Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972-2032.
3. Idaho Operations Office: Chief, Field Office Accounting Section, Finance and Budget Division, Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, (208) 526-1822.
4. Nevada Operations Office: Chief, Payroll Branch, MA-33.31, Department of Energy, Room E-261, GTN Building, Washington, DC 20545, (301) 353-4012.
5. Oak Ridge Operations Office: Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8510, (615) 576-1200.
6. Richland Operations Office: Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376-7311.
7. San Francisco Operations Office: Chief, Accounting Branch, Financial Management Division, Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273-4258.
8. Savannah River Operations Office: Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725-5590.
9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, and all other organizations within the Department of Energy: Chief, Payroll Branch, MA-33 31, Department of Energy, Room E-261, GTN Building, Washington, DC 20545, (301) 353-4012.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services: Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave. SW., Washington, DC 20201, (202) 475-0178.

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Bra
Offices may be found in the local teleph
directory.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chief, Systems Support Branch, Evaluat
and Systems Division, Department
Housing and Urban Development, 451
Street SW., Room 2102, Washington,
20410-3100, (202) 755-6116.

DEPARTMENT OF THE INTERIOR

Secretarial Offices, Office of Territorial
fairs; Advisory Council on Historic Pres
vation; Commission of Fine Arts; De
ware River Basin Commission; and S
quehanna River Basin Commission:

Chief, Division of Fiscal Services, Depa
ment of the Interior, 18th & C Stre
NW., Room 5257, Washington, DC 202
(202) 343-5027.

Bureau of Mines

Chief, Division of Finance, Bureau of Min
Department of the Interior, Denver F
eral Center, Bldg. 20, Room D-22
Denver, CO 80225, (303) 236-0355.

Fish and Wildlife Service

Chief, Division of Finance, Fish and Wi
life Service, Department of the Interi
18th & C Streets NW., Washington,
20240, (202) 343-8991.

Geological Survey

Chief, Office of Financial Management (
270), Geological Survey, Department
the Interior, 12201 Sunrise Valley Dri
Reston, VA 22092, (703) 648-7604.

National Park Service

a. For employees of the National Capit
Region: Associate Regional Director, A
ministration, National Capital Region, N
tional Park Service, 1100 Ohio Drive S
Washington, DC 20242, (202) 485-9826.

b. For employees of the North Atlant
Region: Associate Regional Director, A
ministration, North Atlantic Region, N
tional Park Service, 15 State Stree
Boston, MA 02109, (617) 835-8833.

c. For employees of the Mid-Atlant
Region: Associate Regional Director, A
ministration, Mid-Atlantic Region, Natio
al Park Service, 143 South Third Stree
Philadelphia, PA 19106, (215) 597-4818.

d. For employees of the Southeast Regio
Associate Regional Director, Administr
tion, Southeast Region, National Pa
Service, 75 Spring Street SW., Atlant
GA 30303, (404) 864-3495.

e. For employees of the Midwest Region: A
sociate Regional Director, Administratio

Midwest Region, National Park Service, 1709 Jackson Street, Omaha, NE 68102, (402) 864-3495.

f. For employees of the Southwest Region: Associate Regional Director, Administration, Southwest Region, National Park Service, Old Santa Fe Trail, P.O. Box 728, Santa Fe, NM 87501, (505) 476-6386.

g. For employees of the Rocky Mountain Region: Associate Regional Director, Administration, Rocky Mountain Region, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, CO 80215, (303) 327-2700.

h. For employees of the Western Region: Associate Regional Director, Administration, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36036, San Francisco, CA 94102, (415) 556-4540.

i. For employees of the Pacific Northwest Region: Associate Regional Director, Administration, Pacific Northwest Region, National Park Service, 601 Fourth and Pike Building, Seattle, WA 98101, (206) 399-4658.

j. For employees of the Alaska Region: Associate Regional Director, Administration, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503, (907) 271-2695.

k. For all other employees of the National Park Service or where the garnishor is not certain as to which region the legal process should be sent: Chief Personnel Officer, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-8093.

Bureau of Reclamation

Deputy Assistant Commissioner—Administration, Bureau of Reclamation, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225, (303) 776-0007.

Bureau of Indian Affairs

Chief, Branch of Payroll Liaison, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue SW., Albuquerque, NM 87103, (505) 766-2936.

Office of Surface Mining Reclamation and Enforcement

Chief, Division of Financial Management, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, P.O. Box 25065, Denver, CO 80225, (303) 236-0331.

Bureau of Land Management

Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets NW., Room 3070, Washington, DC 20240, (202) 343-6743.

DEPARTMENT OF JUSTICE

1. For all employees, except employees of the Federal Bureau of Investigation: Assistant Director, Employee Data Service, Systems Operations Staff, Justice Management Division, Department of Justice, P.O. Box 2922, Washington, DC 20013, (202) 633-4442.

2. For employees of the Federal Bureau of Investigation: Personnel Officer, FBI Headquarters, Department of Justice, J. Edgar Hoover Building, Room 6052, Washington, DC 20535, (202) 324-4981.

DEPARTMENT OF LABOR

1. Payments to employees of the Department of Labor: Director, Office of Accounting, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8314.

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoremen's Act should be directed to the: Associate Director for Longshore and Harbor Workers' Compensation, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8721.

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1

Deputy Commissioner, Office of Workers' Compensation Programs, Room 1800, John F. Kennedy Building, Government Center, Boston, MA 12203, (617) 565-2137

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

Deputy Commissioner, Office of Workers' Compensation Programs, 201 Varick Street, P.O. Box 566, New York, NY 10014-0566, (212) 337-2075

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

Deputy Commissioner, Office of Workers' Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596-1457

Delaware, Pennsylvania, and West Virginia

District No. 6

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 311 West Monroe Street, Jacksonville, FL 32202, (904) 791-2821

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 7

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, Hale Boggs Federal Building, 500 Camp Street, P.O. Box 30628, New Orleans, LA 70190, (504) 589-6135

Arkansas and Louisiana

District No. 9

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1240 East 9th Street, Cleveland, OH 44199, (216) 522-3803

Indiana, Minnesota, and Ohio

District No. 10

Deputy Commissioner, Office of Workers' Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604, (312) 353-5656

Illinois, Minnesota, and Wisconsin

District No. 11

Deputy Commissioner, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 374-2195

Iowa, Kansas, Missouri, and Nebraska

District No. 12

Deputy Commissioner, Office of Workers' Compensation Programs, Drawer 3558, Federal Building, 1961 Stout Street, Denver, CO 80294, (303) 844-5407

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

Deputy Commissioner, Office of Workers' Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119-3769, (415) 995-5699

Arizona, California, and Nevada

District No. 14

Deputy Commissioner, Officer of Workers' Compensation Programs, 4010 Federal Office Building, 909 First Avenue, Seattle, WA 98174, (206) 442-5508

Alaska, Idaho, Oregon, and Washington

District No. 15

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 300 Ala Moana Boulevard, Box 50209, Honolulu, HI 96850, (808) 546-8336

All land and water areas west of the con
nents of North and South America to
degrees east longitude (excluding Iran)

District No. 16

Deputy Commissioner, Office of Worke
Compensation Programs, 555 Griff
Square Building, Griffin and You
Streets, Dallas, TX 75202, (214) 767-4707

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25

Assistant Deputy Commissioner, Office
Workers' Compensation Programs, 1100
Street, NW., Washington, DC 20211, (20
724-0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out
the places set forth below and process seek
ing to attach Federal Employees' Compen
sation Act benefits payable to employees
the Department of Labor should be directe
to the: Associate Director for Federal Em
ployees' Compensation, Room S3229, 20
Constitution Avenue NW., Washington, D
20210, (202) 523-7552.

Canada, Mexico, Central and South Amer
ica, and all land and water areas east
the continents of North and South Amer
ica to 60 degrees east longitude (includin
Iran but excluding Puerto Rico and th
Virgin Islands)

DEPARTMENT OF STATE

Executive Director (L/EX), Office of the Legal Adviser, Department of State, Room 5519A, 22nd and C Streets NW., Washington, DC 20520, (202) 647-8323

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

General Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-4702

United States Coast Guard

Commanding Officer (L), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 SE. Quincy Street, Topeka, KS 66683-3591, (913) 295-2520

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees: Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591, (202) 267-3362.

2. Central Region (Nebraska, Kansas, Iowa, Missouri, Minnesota, Wisconsin, Michigan, Illinios, Indiana, Ohio, North Dakota, and South Dakota): Regional Coun-

sel, ACE-7, 601 E. 12th Street, Kansas City, Missouri 64106, (816) 374-5446.

3. Southern Region (Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama, the Virgin Islands, Arkansas, Louisiana, Oklahoma, Texas, New Mexico); FAA Technical Center (Atlantic City, New Jersey); and Metropolitan Washington Airports: Regional Counsel, ASO-7, P.O. Box 20636, Atlanta, Georgia 30320, (404) 763-7204.

4. Mike Monroney Aeronautical Center; Alaskan Region (Alaska); Eastern Region (New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware, and Virginia); New England Region (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island); Northwest Mountain Region (Washington, Oregon, Montana, Utah, Colorado, Idaho, and Wyoming); and Western Pacific Region (Arizona, California, Hawaii, Nevada, Pacific-Asia Area, including Guam, American Somoa, Northern Mariana Islands, and Japan):

Aeronautical Center Counsel, AAC-7, P.O. Box 25082, Oklahoma City, Oklahoma 73103, (405) 686-2296

Federal Highway Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-0740

Federal Railroad Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-0767

Maritime Administration

Chief Counsel, Room 7232, 400 7th Street SW., Washington, DC 20590, (202) 366-5711

National Highway Traffic Safety Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-9511

Urban Mass Transportation Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-4063

St. Lawrence Seaway Development Corporation

General Counsel, P.O. Box 520, Massena, New York 13662, (315) 764-3200

Research and Special Programs Administration

Chief Counsel, 400 7th Street SW., Washington, DC 20590, (202) 366-4400

DEPARTMENT OF THE TREASURY

Office of the Secretary

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-2093

Office of Foreign Assets Control

Chief Counsel, Room 401, 1331 G Street NW., Washington, DC 20220, (202) 376-0236

U.S. Savings Bonds Division

Assistant General Counsel (AL), Room 1410, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-8464

Financial Management Service

Chief Counsel, 401 14th Street SW., Washington, DC 20227, (202) 287-0673

Internal Revenue Service

Assistant Chief Counsel, General, Legal Services, Suite 208, 370 L'Enfant Promenade, SW., Washington, DC 20024-2518, (202) 252-8000.

Bureau of Alcohol, Tobacco & Firearms

Chief Counsel, Room 5526, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7772

Bureau of the Public Debt

Chief Counsel, Room 503, 999 E Street NW., Washington, DC 20239, (202) 376-4320

Secret Service

Legal Counsel, Room 842, 1800 G Street NW., Washington, DC 20223, (202) 535-5771

Bureau of Engraving & Printing

Legal Counsel, Room 109 M, 14th & C Streets SW., Washington, DC 20228, (202) 447-1425

Office of the Comptroller of the Currency

Director, Litigation, Office of Chief Counsel, Fifth Floor, 490 L'Enfant Plaza East SW., Washington, DC 20219, (202) 447-1893

United States Mint

Chief Counsel, 401 14th Street SW., Washington, DC 20227, (202) 376-0564

Federal Law Enforcement Training Center

Legal Counsel, Building 94, Glynco, GA 31520, (912) 267-2441

Customs Service

Assistant Chief Counsel, P.O. Box 68914, Indianapolis, IN 46268, (317) 298-1233

DEPARTMENT OF VETERANS AFFAIRS (VA)

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those cases where VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, Sent to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36193 (205) 272-4670 ext. 4709

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233; (205) 939-2103

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501; (601) 863-1972, ext. 225

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104; (205) 832-7172

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36103; (205) 272-4670, ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401; (205) 553-3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083; (205) 727-0550, ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office and Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250;

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250;

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271-2250.

Arizona

Cave Creek National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Seventh Street and Indian School Road, Phoenix, AZ 85012

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85012, (606) 241-2735

Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012; (602) 277-5551

Fiscal Officer, Prescott Medical Center, Prescott, AZ 86313; (602) 445-4860 ext. 264

Prescott National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Prescott, AZ 86313, (602) 445-4860 ext. 264

Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723, (602) 792-1450 ext. 710

Arkansas

Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301

Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443-4301

Fort Smith National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301

Fiscal Officer, Little Rock Regional Office, 1200 West 3d Street, Little Rock, AR 72201, (501) 378-5142

Fiscal Officer, John L. McClellan Memorial Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205-5484, (501) 661-1202 ext. 1310

California

Send to: Fiscal Officer, Bell Supply Depot, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681-6800

Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94703, (209) 225-6100

Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447-2560 ext. 317

Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825-7084 ext. 2550/2551

Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498-1313 ext. 2101

Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 1100 Wilshire Blvd., Los Angeles, CA 90024, (213) 209-7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 1100 Wilshire Blvd., Los Angeles, CA 90024, (213) 209-7565

Fiscal Officer, Los Angeles Medical Center, Brentwood Division, Los Angeles, CA 90073, (213) 478-3478

Fiscal Officer, Los Angeles Medical Center, Wadsworth Division, Los Angeles, CA 90073, (213) 478-3478

best copy available

ıl Officer, Los Angeles Outpatient
nic, 425 South Hill Street, Los Angeles,
. 90013, (213) 894-3870

Angeles Regional Office of Audit, Send
Fiscal Officer, VA Medical Center,
entwood Division, Los Angeles, CA
)73, (213) 824-4402

Angeles Field Office of Audit, Send to:
deral Officer, VA Medical Center,
ıdsworth Division, Los Angeles, CA
)73, (213) 478-3478

Angeles National Cemetery Area Office,
nd to: Fiscal Officer, VA Medical
nter, Brentwood Division, Los Angeles,
ı 90073, (213) 478-3478

ıl Officer, Martinez Medical Center, 150
ıir Rd., Martinez, CA 94553, (415) 228-
30 ext. 235

ıl Officer, Palo Alto Medical Center,
)1 Miranda Avenue, Palo Alto, CA
304, (415) 493-5000 ext. 5643

erside National Cemetery Area Office,
nd to: Fiscal Officer, VA Medical
nter, Los Angeles, CA 90073, (213) 478-
78

Bruno National Cemetery Area Office,
nd to: Fiscal Officer, VA Medical
nter, 4150 Clement Street, San Bruno,
A 94121, (415) 221-4810 ext. 315/316

al Officer, San Diego Medical Center,
50 La Jolla Village Drive, San Diego, CA
161, (714) 453-7500 ext. 3351

Diego Outpatient Clinic, Send to: Fiscal
fficer, VA Medical Center, 3350 La Jolla
illage Drive, San Diego, CA 92161, (714)
3-7500 ext. 3351

al Officer, San Diego Regional Office,
22 Camino Del Rio North, San Diego,
A 92108, (714) 289-5703

sdiction over the following counties in
alifornia: Imperial, Riverside and San
iego.

Francisco National Cemetery Area
ffice, Send to: Fiscal Officer, VA Medical
fficer, 4150 Clement Street, San Francis-
), CA 94121, (415) 556-0483

cal Officer, San Francisco Regional
ffice, 211 Main Street, San Francisco,
A 94105, (415) 974-0160

isdiction over all counties in California
xcept Inyo, Kern, Los Angeles, Orange,
an Bernardino, San Luis Obispo, Santa
arbara, Ventura, Imperial, Riverside,
an Diego, Alpine, Lassen, Modoc and
Iono.

cal Officer, San Francisco Medical
enter, 4150 Clement Street, San Francis-
), CA 94121, (415) 221-4810 ext. 315/316

cal Officer, Sepulveda Medical Center,
6111 Plummer Street, Sepulveda, CA
1343, (818) 891-2377

Colorado

cal Officer, Denver Regional Office,
enver Federal Center, Bldg. 20, Denver,
O 80225, (303) 234-3920

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393-2813

Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393-2813

Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393-2813

Fort Lyon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038 (719) 384-3987

Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038, (719) 384-3987

Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242-0731

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244-3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666-6951 ext. 369

Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932-5711 ext. 859

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633-5432

District of Columbia

Finance Division Chief (047H), Washington Central Office Room C-50, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-3901

Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office Room C-50, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street NE., Washington, DC 20421, (202) 275-1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745-8229

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Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504, (813) 398-9321

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376-1611 ext. 6685

Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 S.W. Archer Road, Gainesville, FL 32602, (904) 376-1611 ext. 6685

Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, South St. Petersburg, FL 33731, (813) 893-3236

Fiscal Officer, Lake City Medical Center, 801 South Manor Street, Lake City, FL 32055, (904) 755-3016

Miami VA Office, Send to: Fiscal Officer VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893-3236

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324-4284

Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa FL 33612, (813) 971-4500

Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, Florida 33612, (813) 972-7501

Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324-4284

Pensacola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863-1972 ext. 225

St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602, (904) 376-1611 ext. 6685

Fiscal Officer, St. Petersburg Regional Office, 144 First Avenue South, St. Petersburg, FL 33612, (813) 893-3236

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street NE., Atlanta, GA 30365, (404) 347-5008

Atlanta Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111

Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111

Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street NE., Atlanta, GA 30301, (404) 347-5008

Fiscal Officer, Augusta Medical Center, Augusta, GA 30904, (404) 733-4471 ext. 675/676

Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724-5116

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111 ext. 6320

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272-1210 ext. 373

Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321-6111

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 541-1490

Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands

Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 546-2109

Idaho

Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336-5100 ext. 7312

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334-1009

Illinois

Alton National Cemetery Area Office, Send to: Fiscal Offic ., VA Medical Center, St. Louis, MO 63125, (314) 894-4631

AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141, (312) 343-7200 ext. 2481

Fiscal Officer, Chicago Medical Center (Lakeside), 33 East Huron Street, Chicago, IL 60611, (312) 943-6600

Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666-6500 ext. 3338

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680, (312) 886-9417

Fiscal Officer, Danville Medical Center, Danville, IL 61832, (217) 442-8000

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Street, Danville, IL 61832, (217) 442-8000 ext. 210

Fiscal Officer, Hines Medical Center, Hines, IL 60141, (312) 343-7200 ext. 2481

Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681-6800

Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681-6800

Officer. Hines Data Processing
r. P.O. Box 66303. AMF O'Hare.
IL 60666. (312) 681-6650
Officer. Marion Medical Center.
n. IL 62959. (618) 997-5311
City National Cemetery Area Office.
to: Fiscal Officer. VA Medical
r. 2401 West Main Street. Marion. IL
(618) 997-5311
Officer. North Chicago Medical
r. North Chicago. IL 60064
National Cemetery Area Office.
to: Fiscal Officer. VA Medical
er. Iowa City. IA 52240. (319) 338-
ext. 304
sland National Cemetery Area Office.
to: Fiscal Officer. VA Medical
er. Iowa City. IA 52240. (319) 338-
ext. 304
field National Cemetery Area Officer.
to: Fiscal Officer. VA Medical
er. Danville. IL 61832. (217) 442-8000

Indiana

ville. Outpatient Clinic Substation.
to: Fiscal Officer. VA Medical
er. Marion. IL 62959. (618) 997-5311
Officer. Fort Wayne Medical Center.
Randalia Drive. Fort Wayne. IN
5 (219) 426-5431
Officer. Indianapolis Regional Office.
North Pennsylvania Street. Indianap-
IN 46204. (317) 269-7840
Officer. Indianapolis Medical Center.
West 10th Street. Indianapolis. IN
02. (317) 635-7401 ext. 2363
napolis National Cemetery Area
ice. Send to: Fiscal Officer. VA Medical
ter. 1481 West 10th Street. Indianapo-
IN 46202. (317) 635-7401 ext. 2363
Officer. Marion Medical Center.
rion. IN 46952. (317) 674-3321 ext. 211
on National Cemetery Area Office.
d to: Fiscal Officer. VA Medical
ter. Marion. IN 46952. (317) 674-3321
. 211
Albany National Cemetery Area Office.
d to: Fiscal Officer. VA Medical
nter. 800 Zorn Avenue. Louisville. KY
02. (502) 895-3401

Iowa

l Officer. Des Moines Regional Office.
Walnut Street. Des Moines. IA 50309.
5) 284-4220
al Officer. Des Moines Medical Center.
th & Euclid Avenue. Des Moines. IA
310. (515) 255-2173
al Officer. Iowa City Medical Center.
wa City. IA 52246. (319) 338-0581 ext.
02
kuk National Cemetery Area Office.
nd to: Fiscal Officer. VA Medical
enter. Iowa City. IA 52240. (319) 338-
81 ext. 304

Kansas

Ft. Leavenworth National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Leavenworth. KS 66048. (913) 682-2000 ext. 214.

Ft. Scott National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Leavenworth. KS 66048. (913) 682-2000 ext. 214

Leavenworth National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Leavenworth. KS 66048. (913) 682-2000 ext. 214

Fiscal Officer. Leavenworth Medical Center. Leavenworth. KS 66048. (913) 682-2000 ext. 214

Fiscal Officer. Topeka Medical Center. 2200 Gage Blvd.. Topeka. KS 66622. (913) 272-3111 ext. 521

Fiscal Officer. Wichita Medical Center. 5500 East Kellogg. Wichita. KS 67211. (316) 685-2221 ext. 256

Wichita Regional Office. Send to: VA Medical Center. 5500 East Kellogg. Wichita. KS 67211. (316) 685-2111 ext. 256

Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.

Fiscal Officer. VA Regional Office. 901 George Washington Blvd.. Wichita. KS 67211. (316) 269-6813

Kentucky

Danville National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Lexington. KY 40507. (606) 223-4511

Fiscal Officer. Knoxville Medical Center. Knoxville. KY 50138. (515) 842-3101 ext. 241

Lebanon National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Lexington. KY 40507. (606) 233-4511

Lexington National Cemetery Area Office. Send to: Fiscal Officer. VA Medical Center. Lexington. KY 40507. (606) 233-4511

Fiscal Officer. Lexington Medical Center. Lexington. KY 40507. (606) 233-4511

Fiscal Officer. Louisville Regional Office. 600 Federal Place. Louisville. KY 40202. (502) 582-6482

Fiscal Officer. Louisville Medical Center. 800 Zorn Avenue. Louisville. KY 40202. (502) 895-3401 ext. 241

Louisville National Cemetery Area Office (Zachary Taylor). Send to: Fiscal Officer. VA Medical Center. 800 Zorn Avenue. Louisville. KY 40202. (502) 895-3401 ext. 241

Louisville National Cemetery Area Office (Cave Hill). Send to: Fiscal Officer. VA

Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895-3401 ext. 241
Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40507, (606) 233-4511
Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233-4511
Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233-4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71303, (318) 473-0010 ext. 2281
Baton Rouge National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811
Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70133, (504) 589-6604
Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811
Baton Rouge National Cemetery, 220 North 19th Street, Baton Rouge, LA 70806, (504) 389-0788
Pineville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442-0251
Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101, (318) 221-8411 ext. 722
Shreveport VA Office, Send to: Fiscal Officer, VA Regional Officer, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589-6604
Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568-0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623-8411
Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623-8411
Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623-8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932 ext. 5281/5282
Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962-4410
Jurisdiction does not include Prince Georges and Montgomery Counties which are included under the Washington, D.C. Regional Office
Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932 ext. 5281/5282
Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932 ext. 5281/5282
Baltimore National Cemetery Area Office (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467-9932 ext. 5281/5282
Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687-8768 ext. 328
Hyattsville Field Office of Audit, Send to: Fiscal Division Chief C047H), VA Central Office, Room C-50, 810 Vermont Avenue, Washington, DC 20420, (202) 389-3901
Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642-2411 ext. 5224/5225

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275-7500
Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg. Room 400C, Government Center, Boston, MA, (617) 565-2616
Jurisdiction over certain towns in Bristol and Plymouth Countries and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.
Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232-9500 ext. 427/420
Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232-9500 ext. 427/420
Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583-4500 ext. 266
Fiscal Officer, Brockton Medical Center, Brockton, MA 02401, (617) 583-4500 ext. 266
Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 322-9500 ext, 427/420
New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273-7100
Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584-4040
Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical

Center, Northampton, MA 01060, (413) 584-4040

Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F. Kennedy Bldg. Rm 400C, Government Center, Boston, MA 02203, (617) 565-2616

Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323-7700 ext. 5650

Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 322-7700 ext. 5650

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562-6000 ext. 535

Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769-7100 ext. 288/289

Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016, (616) 966-5600 ext. 3566

Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49016, (616) 966-5600 ext. 3566

Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226-4190

Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774-3300 ext. 308

Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793-2340 ext. 3061

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725-6767 ext. 6311

Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252-1600 ext. 411

Fiscal Officer, St. Paul Center (Regional Office), Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725-4075

Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417 (612) 725-2150

Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725-6767 ext. 6311

St. Paul Data Processing Center, Send to: Fiscal Officer, VA Center, Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725-3075

St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725-6767 ext 6311

Mississippi

Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863-1972 ext. 225

Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863-1972 ext. 225

Corrinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523-8990

Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863-1972 ext. 225

Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362-4471 ext. 1281

Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol Street, Suite 207, Jackson, MS 39269, (601) 965-4853

Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Drive, Jackson, MS 39216, (601) 362-4471 ext. 1281

Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 62501, (314) 443-2511

Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443-2511 (314) 443-2511 ext. 6050

Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City Medical Center, (816) 861-4700 ext. 214

Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901, (314) 686-4151

St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894-4931

Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539-3112

Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686-4151 ext. 265

St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894-4631

Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 894-4631

St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539-3112

Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443-4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442-6410

Fiscal Officer, Miles City Medical Center, 210 N. Broadwell, Miles City, MT 59301, (406) 232-3060

Nebraska

Fiscal Officer, Grand Island Medical Center, 2201 N. Broadwell, Grand Island, NE 68801, (308) 382-3660 ext. 244

Fiscal Officer, Lincoln Regional Office, 100 Centennnial Mall North, Lincoln, NE 68510, (402) 437-5041

Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489-3802 ext. 332

Maxwell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Grand Island, NE 68801, (308) 382-3660 ext. 244

Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE, (402) 346-8800 ext 4538

Nevada

Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89250, (702) 786-7200 ext. 244

Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV, (702) 784-5637

Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.

Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786-7200 ext. 244

Henderson Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786-7200 ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103, (603) 666-7638

Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624-4366

New Jersey

Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 382-2400, ext. 291/292

Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676-1000 ext. 1771

Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939, (201) 647-0180 ext. 4302

Newark Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676-1000 ext. 125

Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645-3507

Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994-2511

Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (210) 725-2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue SW., Albuquerque, NM 87102, (505) 766-2204 (F) 474-2004

Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108, (505) 265-1711

Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive SE., Albuquerque, NM 87108, (505) 265-1711 ext. 2214

New York

Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12202, (518) 462-3311 ext. 355

Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, New York 13210, (315) 476-7461 ext. 2358

Albany VA Office, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, New York 10001, (211) 620-6293

Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345-7500 ext. 215

Fiscal Officer, Bath Medical Center, Bath, NY 14810, (607) 776-2111 ext. 1502

Fiscal Officer, Bronx Medical Center, 140 W. Kings Bridge Road, Bronx, NY 10408, (212) 584-9000 exts. 1502, 1717

Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542

Brooklyn National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3541

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630-3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 834-9200 ext. 2426, 584-900 ext. 1603 or 1717

Calverton National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Northport, NY 11768, (516) 261-4400 ext. 7101/7103

Fiscal Officer, Canandiagua Medical Center, Canandiagua, NY 14424, (716) 394-2000 ext. 3368

Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882-5404

Elmira National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776-2111

Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261-4400 ext. 2462/2463

Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737-4400 ext. 2463

Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686-7320

New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686-7320

New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001 (212) 620-6293

Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620-6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686-7320

First Officer, Northport Medical Center, Northport, NY 11768, (516) 261-4400 ext. 2462/2463

Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 343-7500 ext. 215

Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476-7461

Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846-5251

North Carolina

Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28801 (704) 298-7911 ext. 5616

Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705 (919) 671-6913

Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488-2120

New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488-2120

Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705 (919) 286-0411 ext. 6469

Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144 (704) 636-2351

Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144 (704) 636-2351

Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301 (919) 488-2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102 (919) 761-3513

Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636-2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58102, (701) 232-3241 ext. 249

See listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773-1141 ext. 203

Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 550-5040 ext. 4113

Fiscal Officer, VA Medical Center, 2090 Kenny Road, Columbus, OH 43221, (614) 469-6712

Cincinnati VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522-3540

Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44109, (216) 522-3540

Fiscal Officer, Cleveland Medical Center, 10,000 Brecksville Rd., Brecksville, OH 44141, (216) 526-3030 ext. 7170

Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43210, (614) 469-6712

Columbus VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522-3540

Oregon

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220-8262 ext. 6948

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221-2521

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220-8262 ext. 6948

Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97210, (503) 222-9221 ext. 6984

Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440-1000 ext. 4261

Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseberg, OR 97470, (503) 672-4411

Fiscal Officer, White City Domiciliary, White City, OR 97501, (503) 826-2111 ext. 241

White City National Cemetery Area, Send to: Fiscal Officer, VA Office Domiciliary, White City, OR 97501, (503) 826-2111 ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603, (814) 943-8164 ext. 7046

Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272-6621 ext. 229

Fiscal Officer, VA Medical Center, Butler, PA 16001, (412) 287-4781 ext. 4505

Fiscal Officer, Coatsville Medical Center, Coatsville, PA 19320, (215) 384-7711 ext. 342

Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501, (814) 868-8661

Harrisburg Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272-6621 ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042, (717) 272-6621 ext. 229

Fiscal Officer, Philadelphia Center (Regional Office), P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monore, Montgomery, Monroe, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philippines

1. Manila Regional Office Outpatient Clinic
2. Manila Regional Office Center

For either of the above, send to: Director, U.S. Veterans Administration, APO, San Francisco, CA 96528, 011-632-521-7116 ext. 2560

Puerto Rico

Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (890) 766-5115

Hato Regional Office, GPO, Box 4867, San Juan, PR 00936, (809) 766-5115

Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763-0275

Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763-0275

Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927-5800, (809) 766-5365 or 5953

Rhode Island

Fiscal Officer, Providence Regional Office, 321 South Main Street, Providence, RI 02903, (401) 528-4439

Jurisdiction over the following towns and counties in Massachusetts: All towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908, (401) 475-3019

South Carolina

Beaufort National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577-5011 ext. 222

Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577-5011 ext. 222

Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201, (803) 765-5210

Fiscal Officer, Columbia Medical Center, Columbia, SC 29201, (803) 776-4000 ext. 150

Florence National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776-4000 ext. 149

Greenville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776-4000 ext. 149

South Dakota

Fort Meade National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347-2511 ext. 272

Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347-2511 ext. 272

Hot Springs National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747, (605) 745-4101 ext. 246

Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747, (605) 745-4101

Tennessee

Chattanooga Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327-4651

Chattanooga National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37123, (615) 893-1360

Knoxville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926-1171 ext. 7601

Knoxville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327-4651 ext. 553

Madison National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327-4651 ext. 553

Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523-8990 ext. 5050

Memphis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523-8901 ext. 50

Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926-1171 ext. 7601

Mountain Home National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926-1171

Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893-1360 ext. 3198

Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37203, (615) 736-5352

Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327-4751 ext. 5147

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355-9703 ext. 7370

Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 482-4028

Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493

Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263-7361 ext. 326

Fiscal Officer, Bonham Medical Center, East 96th & Lipscomb Street, Bonham, TX 75418, (218) 583-2111 ext. 240

Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696-9660 ext. 5871

Fiscal Officer, Dallas Medical Center, 4500 South Lancater Road, Dallas, TX 75216, (214) 376-5451 ext. 5238

Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660-4121

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patrico, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala.

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896-2020 ext. 300

Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757-6454

Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 543-7460/7961

Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 543-7960/7961

Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795-7493

Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896-2020 ext 300

Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 657-6464 ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762-7209

Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883-3511 ext. 224

McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696-9660 ext. 5871

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696-9660 ext. 5871

San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 226-4185

San Antonio National Cemetery Area Office, Send to: Fiscal Officer, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696-9660 ext. 5871

San Antonio National Cemetery Area Office (Fort Sam Houston), Send to: Fiscal Officer, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696-9660 ext. 5871

Fiscal Officer, Temple Medical Center, Temple, TX 76501, (817) 778-4811

Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710, (817) 756-6454

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752-6581

Waco Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752-6581

Utah

Fiscal Officer, Salt Lake City Regional Center, 125 South State Street, Salt Lake City, UT 84147, (801) 524-5361

Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 85148, (810) 584-1213

Vermont

Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction VT 05001, (802) 295-9363 ext. 1034

Virginia

Alexandria National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745-8228

Culpeper National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263-0811 ext. 3176

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982-2463

Hopewell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304

Leesburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745-8228

Mechanicsville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304

Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (807) 722-9961

Hampton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (807) 722-9961

Quantico National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street NW., Washington, DC 20422, (202) 745-8228

Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230-1304

Richmond National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (808) 230-1304

Fiscal Officer, Roanoke Regional Office, 210 Franklin Road SW., Roanoke, VA 24011, (703) 982-6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, DC, Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153, (703) 982-2463

Sandston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231-9011 ext. 205

Staunton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135, (703) 982-2463

Winchester National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263-0811 ext. 3176

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493, (206) 582-8440 ext 6049

Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98714, (206) 442-5025

Fiscal Officer, Seattle Medical Center, 1160 S. Columbian Way, Seattle, WA 98198, (206) 764-2226

Seattle Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1160 S. Columbia Way, Seattle, WA 98198, (206) 764-2226

Fiscal Officer, Spokane Medical Center North, 4815 Assembly Street, Spokane, WA 99205, (509) 327-0283 ext. 286

Vancouver Medical Center, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220-8262 ext. 6948

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 255-2121 ext. 4174

Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623-3461 ext. 3389

Grafton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623-3461 ext. 335

Fiscal Officer, Huntington Regional Office, 5202 Eighth Street, Huntington, WV 25701, (304) 529-5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704, (304) 429-6741 ext. 2422

Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401, (304) 263-0811 ext. 3176

Wheeling Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683-7675

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262-7050

Fiscal Officer, Milwaukee (Wood) Regional Office, P.O. Box 6, Wood, WI 53193, (414) 671-8121

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372-1786

Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384-2000 ext. 2591

Wood National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384-2000 ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 778-7339

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672-3473

II. AGENCIES

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

AGENCY FOR INTERNATIONAL DEVELOPMENT

For employees of the Agency for International Development and the Trade and Development Program:

Assistant General Counsel for Employee and Public Affairs (GC/EPA), Agency for International Development, Room 6892, Washington, DC 20523-0076, (202) 647-8218

CENTRAL INTELLIGENCE AGENCY

Director of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, DC 20505, or

Chief, Special Activities Staff, Office of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, DC 20505, (703) 351-3452

COMMISSION ON CIVIL RIGHTS

Solicitor, Commission on Civil Rights, Room 710, 1121 Vermont Avenue NW., Washington, DC 20425, (202) 254-3070

Commodity Futures Trading Commission

Director of Personnel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-3275

Consumer Product Safety Commission

General Counsel, 5401 Westbard Avenue Washington, DC 20207, (301) 492-6980

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, Room 947, 811 Vermont Avenue NW., Washington, DC 20571 (Stop No. 292), (202) 566-8334

Equal Employment Opportunity Commission

Director, Employee Relations Division, Personnel Management Services, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507, (202) 663-4354

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4122

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898-3686

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street NW., Washington, DC 20463, (202) 376-5270

Federal Home Loan Bank Board

Director, Administration Division, Office of the General Counsel, Federal Home Loan Bank Board, 3rd Floor, 1700 G Street NW., Washington, DC 20552, (202) 377-6462

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, Room 225, 500 C Street SW., Washington, DC 20424, (202) 382-0751

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5773

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, (202) 653-5305

Federal Retirement Thrift Investment Board

Payments to Board employees:

Director of Administration, Federal Retirement Thrift Investment Board, Suite 500, 805 Fifteenth Street NW., Washington, DC 20005, (202) 523-7061

Benefits from the Thrift Savings Fund:

General Counsel, Federal Retirement Thrift Investment Board, Suite 500, 805 Fifteenth Street NW., Washington, DC 20005, (202) 523-6367

General Services Administration

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut):

Regional Counsel, 10 Causeway Street, Boston, MA 02222, (617) 835-5896

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands):

Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264-8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, DC):

Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597-1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Flordia):

Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street SW., Atlanta, GA 30303, (404) 242-0915

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):

Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri):

Regional Counsel, 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926-7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana):

Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334-2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado):

Regional Counsel, Building 41—Denver Federal Center, Denver, CO 80225, (303) 776-7352

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam):

Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 454-9309

10. Region 10 (Washington, Oregon, Idaho, Alaska):

Regional Counsel, GSA Center, Auburn, WA 98002, (206) 396-7007

11. Greater metropolitan area of Washington, DC (includes parts of Maryland and Virginia):

Regional Counsel, 7th & D Streets NW., Washington, DC 20547, (202) 472-1809

Interstate Commerce Commission

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, (202) 653-5805

National Aeronautics and Space Administration

NASA Headquarters

Associate General Counsel (General), Attention: SN Code GG, NASA Headquarters, 400 Maryland Avenue SW., Washington, DC 20546, (202) 453-2465

NASA Field Installations

Chief Counsel, Ames Research Center (including Dryden Flight Research Center), Moffett Field, CA 94035, (415) 694-5103

Chief Counsel, Goddard Space Flight Center (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286-9181

Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483-3021

Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (407) 867-2550

Chief Counsel, Langley Research Center, Hampton, VA 23665, (805) 865-3397

Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433-2318

Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812, (205) 544-0012

Chief Counsel, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, (601) 688-2164

National Archives and Records Administration

Director, Legal Services Staff, National Archives and Records Administration (NSL), Washington, DC 20408, (202) 523-3618

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street NW., Washington, DC 20576, (202) 724-0170

National Credit Union Administration

Director, Division of Personnel, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456, (202) 357-1156

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 522, Washington, DC 20506, (202) 682-5418

National Endowment for the Humanities

General Counsel, National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0322

National Labor Relations Board

Finance Officer, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Room 1300, Washington, DC 20570, (202) 254-9307

National Mediation Board, Administrative Officer, National Mediation Board, Washington, DC 20572, (202) 523-5950

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 202 S. State Street, Chicago, IL 60604

National Science Foundation

General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 634-4266

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594, ATTN: AD-30, (202) 382-6718

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779-2721

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-4750

Office of Personnel Management

Payments to OPM employees:

General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632-5090.

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:

Associate Director for Retirement and Insurance, Office of Personnel Management, Allotment Section, P.O. Box 17, Washington, DC 20044, (202) 632-6188.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Director of Personnel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527, (202) 457-7082

PANAMA CANAL COMMISSION

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011, 52-3519

PENSION BENEFIT GUARANTY CORPORATION

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, (202) 778-8820

RAILROAD RETIREMENT BOARD

Deputy General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751-4935

SELECTIVE SERVICE SYSTEM

General Counsel, Selective Service System, 1023 31st Street NW., Washington, DC 20435, (202) 724-1167

SMALL BUSINESS ADMINISTRATION

[District Directors are designated to accept legal process for their respective districts as set forth in 13 CFR 101.3-1.]

District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254-1344

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271-4022

District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261-3611

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378-5871

District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688-2956

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 239-5440

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556-7490

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837-2607

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244-3600

District Director, Washington District Office, 1030 15th Street NW., Washington, DC 20417, (202) 655-4000

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791-3782

District Director, Miami District Office, 2222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350-5521

District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347-2441

District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546-8950

District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384-1096

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284-4422

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353-4528

District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269-7272

District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267-6571

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201, (502) 582-5971

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589-6685

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622-6171

District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 962-4392

District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223-2100

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48226, (313) 226-6075

District Director, Minneapolis District Office, '2 South 6th Street, Minneapolis, MN 55402, (612) 725-2362

District Director, Jackson District Office, 100 West Capitol Street, Jackson, MS 39201, (601) 969-4371

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374-3416

District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425-4191

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449-5381

District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (404) 221-4691

trict Director, Las Vegas District Office,
01 E. Stewart, Las Vegas, NV 89101, (702)
85-6611
trict Director, Concord District Office,
5 Pleasant Street, Concord, NH 03301,
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trict Director, Newark District Office,
70 Broad Street, Newark, NJ 07102, (201)
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trict Director, Albuquerque District
Office, 5000 Marble Avenue, NE., Albu-
uerque, NM 87110, (505) 766-3430
strict Director, New York District Office,
6 Federal Plaza, New York, NY 10007,
212) 264-4355
strict Director, Syracuse District Office,
00 South Clinton Street, Syracuse, NY
3260, (315) 423-5383
strict Director, Charlotte District Office,
230 S. Tryon Street, Charlotte, NC 28202,
704) 371-6111
strict Director, Fargo District Office, 657
2nd Avenue, North, Fargo, ND 58108,
701) 237-5771
strict Director, Sioux Falls District
Office, 101 South Main Avenue, Sioux
Falls, ND 57102, (605) 336-2980
strict Director, Cleveland District Office,
1240 East 9th Street, Cleveland, OH
44199, (216) 522-4180
strict Director, Columbus District Office,
85 Marconi Boulevard, Columbus, OH
43215, (614) 469-6860
istrict Director, Oklahoma City District
Office, 200 NW. 5th Street, Oklahoma
City, OK 73102, (405) 231-4301
istrict Director, Portland District Office,
1220 SW. Third Avenue, Portland, OR
97204, (503) 221-2682
istrict Director, Philadelphia District
Office, 231 St. Asaphs Road, Bala
Cynwyd, PA 19004, (215) 597-3311
istrict Director, Pittsburgh District Office,
1000 Liberty Avenue, Pittsburgh, PA
15222, (412) 644-2780
istrict Director, Hato Rey District Office,
Chardon & Bolivia Streets, Hato Rey, PR
00918, (809) 753-4572
istrict Director, Providence District Office,
57 Eddy Street, Providence, RI 02903,
(401) 528-4580
istrict Director, Columbia District Office,
1835 Assembly Street, Columbia, SC 29201
istrict Director, Nashville District Office,,
404 James Robertson Parkway, Nashville,
TN 37219, (615) 251-5881
istrict Director, Dallas District Office,
1100 Commerce Street, Dallas, TX 75242,
(214) 767-0605
istrict Director, Houston District Office,
00 Dallas Street, Houston, TX 77002,
(713) 226-4341
istrict Director, Lower Rio Grande Valley
District Office, 222 East Van Buren
Street, Harlingen, TX 78550, (512) 423-
4534

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762-7466
District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229-6250
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425-5800
District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229-0538
District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782-2617
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442-5534
District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456-5310
District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623-5631
District Director, Madison District Office, 212 E. Washington Avenue, Madison, WI 53703, (608) 264-5261
District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265-5266

TENNESSEE VALLEY AUTHORITY

Payments to TVA employees: Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (615) 632-2101

Payments of retirement benefits under the TVA Retirement System: Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (615) 632-0202

UNITED STATES INFORMATION AGENCY

General Counsel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485-7976

UNITED STATES SOLDIERS' & AIRMEN'S HOME

Chief, Employee Management Branch, United States Soldiers' and Airmen's Home, Box 1200, 3700 North Capitol Street NW., Washington, DC 20317, (301) 722-3425

III. THE UNITED STATES POSTAL SERVICE AND THE POSTAL RATE COMMISSION

UNITED STATES POSTAL SERVICE

Service of process may be made on the postmaster or head of the installation where the employee obligor works. However, if the installation where the employee obligor works cannot be determined, service of process may be made on the appropriate

Chief Field Counsel. The geographic areas served by the Chief Field Counsels and their addresses are as follows:

Chief Field Counsel, Northeast Region, U.S. Postal Service, 6 Griffin Park Road North, Windsor, CT 10098-0120, (203) 285-7127

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070-079 and 085-089), New York, and the Caribbean Islands.

Chief Field Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19197-0120, (215) 496-6011

Serving: The District of Columbia, Delaware, Kentucky, Ohio, Maryland, Pennsylvania, Virginia, West Virginia, southern New Jersey (ZIP codes beginning with 080-084), North Carolina and South Carolina (ZIP codes beginning with 290-292).

Chief Field Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166-0170, (901) 722-7350

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP codes beginning with 298-299), Tennessee and Texas.

Chief Field Counsel, Central Region, U.S. Postal Service, 300 South Riverside Street, Chicago, IL 60606-0170, (212) 765-5264

Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Colorado and Wyoming.

Chief Field Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099-0170, (415) 742-4810

Serving: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and the Pacific Islands including the Trust Territory.

Processing of legal process in garnishment actions will be substantially expedited by serving the postmaster or installation head rather than the Chief Field Counsel.

POSTAL RATE COMMISSION

Chief Administrative Officer, Postal Rate Commission, 2000 L Street NW., Washington, DC 20268, (202) 254-3880

IV. THE DISTRICT OF COLUMBIA, AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS

THE DISTRICT OF COLUMBIA

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue NW., Washington, DC 20004, (202) 727-6979

AMERICAN SAMOA

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633-4155

GUAM

Attorney General, P.O. Box DA, Agana, Guam 96910, 472-6841 (Country Code 671)

THE VIRGIN ISLANDS

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774-1163

V. INSTRUMENTALITY

SMITHSONIAN INSTITUTION

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive SW., Washington, DC 20560, (202) 381-5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490-9000

[55 FR 1357, Jan. 16, 1990, as amended at 55 FR 10223, Mar. 20, 1990]

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart A—[Reserved]

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

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591.203 Agencies and employees covered.
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591.207 Allowance categories, eligibility, and adjustments.
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APPENDIX A OF SUBPART B—PLACES AND RATES AT WHICH ALLOWANCES SHALL BE PAID

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Subpart C—Allowance Based on Duty at Remote Worksites

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PPENDIX A OF SUBPART C—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS
PPENDIX B OF SUBPART C—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

Subpart A—[Reserved]

ubpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

AUTHORITY: 5 U.S.C. 5941; E.O. 10,000; 3 FR, 1943-1948 Comp., p. 792; E.O. 12,510; 3 FR, 1985 Comp., p. 338.

SOURCE: 55 FR 1373, Jan. 16, 1990, unless therwise noted.

591.201 Definitions.

In this subpart—

Allowance area means a geographic rea for which an allowance has been uthorized. There may be more than ne allowance area within a nonfor- ign area. Allowance areas are listed in 591.204 of this part.

Date of arrival means the employ- e's first day in a pay status in the al- owance or differential area.

Date of departure means the employ- e's last day in a pay status in the al- owance or differential area.

Day or *calendar day* means any day f the year. Fractional days are con- idered whole days.

Differential area means a geographic area for which a post differential has been authorized. Differential areas are listed in § 591.208 of this part.

Nonforeign allowance or *allowance* means a cost-of-living allowance established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC, area.

Nonforeign area means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, territories and possessions of the United States, and any additional areas located outside the contiguous United States that the Secretary of State designates as being within the scope of Part II of Executive Order 10,000, as amended. Nonforeign areas are listed in § 591.202 of this part.

Nonforeign differential or *differential* means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

Washington, DC, area or *Washington area* means the District of Columbia and all other areas in Maryland and Virginia included in the Washington DC-MD-VA Metropolitan Statistical Area as defined by the Office of Management and Budget.

§ 591.202 Areas covered.

The following areas are nonforeign areas:

(a) Alaska (including all the Aleutian islands east of longitude 167 degrees east of Greenwich).

(b) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(c) Canton and Enderbury Islands.

(d) Commonwealth of Puerto Rico.

(e) Virgin Islands of the United States.

(f) Guam.

(g) Commonwealth of the Northern Mariana Islands.

(h) Hawaii (including Ocean or Kure Island).

(i) Howland, Baker, and Jarvis Islands.

(j) Johnston Island and Sand Island.

(k) Kingman Reef.

(l) Midway Islands.

(m) Navassaa Island.

(n) Palmyra Atoll.

(o) Wake Island.

(p) Any small guano islands, rocks, or keys that, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

(q) Any other islands to which the U.S. Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, an independent establishment, or a wholly-owned Government corporation. The following pay plans are covered by this subpart:

(1) General Schedule (including the Performance Management and Recognition System, the Senior Executive Service, and employees in positions authorized by 5 CFR 213.3102(w) whose rates of basic pay are established under the General Schedule).

(2) Veterans Health Services and Research Administration (Department of Veterans Affairs).

(3) Foreign Service (where applicable under this subpart).

(4) Postal Service (where applicable under provisions of 39 U.S.C.).

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in positions authorized by 5 CFR 213.3102 (v) or (w) whose rates of basic pay are not established under the General Schedule or under the Federal Wage System.

§ 591.204 Establishment of allowance areas.

(a) The Office of Personnel Management (OPM) designates within nonforeign areas allowance areas where employees are eligible to receive a cost-of-living allowance by virtue of living costs that are substantially higher than those in the Washington, DC, area. In establishing the limits of allowance areas, OPM considers:

(1) The existence of a well defined economic community;

(2) The availability of consumer goods and services;

(3) The concentration of Federal employees covered by this supart; and

(4) Unique circumstances related to a specific location.

(b) The following allowance areas have been established where an allowance is authorized to be paid:

(1) *State of Hawaii.* (i) City and County of Honolulu.

(ii) County of Kauai.

(iii) County of Maui (including Kalawao County).

(iv) County of Hawaii.

(2) *State of Alaska.* (i) City of Anchorage and 50 mile radius by road.

(ii) City of Fairbanks and 50 mile radius by road.

(iii) City of Juneau and 50 mile radius by road.

(iv) The rest of the State.

(3) *Commonwealth of Puerto Rico.* The entire Commonwealth.

(4) *The Virgin Islands.* (i) St. Croix.

(ii) St. Thomas and St. John.

(5) *Territory of Guam.* The entire Territory.

(c) The head of a department or agency will submit requests in writing to OPM for the establishment or revision of allowance areas.

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC area. Two allowance rates are calculated for each area; Local Retail and Commissary/Exchange (see § 591.207 of this part). The four categories of expenses are:

(1) Consumption goods and services.

(2) Transportation.

(3) Housing.

(4) Miscellaneous expenses.

(b) Costs are determined for several income levels and home occupancy types (renter or owner), and averaged.

(1) The cost of consumption goods and services (excluding transportation and housing) will be estimated from appropriate consumer expenditure data at several income levels for a standard family size. The cost of goods and services in the Washington, DC area will be adjusted by a price index reflecting the estimated price difference between the allowance area and the Washington, DC area.

(i) Goods and services surveyed. The types and amounts of consumption goods and services to be surveyed at each income level will be derived from appropriate consumer expenditure surveys. Whenever possible, exact brands and models are priced in each location. Price data are obtained from appropriate retail outlets in each area. Price data from military facilities are provided by the Department of Defense where needed. Individual items are grouped into categories according to common functions or uses.

(ii) The item and category weights are derived from consumer expenditure surveys. The category weights vary by income.

(2) Transportation costs for each income level and area are estimated using data collected by or for OPM on automobile operating expenses and other factors affecting transportation costs.

(3) Housing costs for renters and owners are estimated based on similar housing units. Standard shelter specifications (type, size, age) are selected for each income level. Appropriate living communities to survey based on the income level and housing type specified are selected for each survey location. Housing data on units within the selected communities meeting the specifications are then collected for newly purchased and previously purchased units. Mortgage interest rate and payment data are collected from lending institutions in the area, utility companies and other sources provide information about utility rates, and local governments provide information on real estate tax rates. These data are then combined to estimate dollar expenditures within each survey area for the specified shelter in the selected community.

(4) Miscellaneous expenses. Miscellaneous expenses for health care, gifts, contributions, savings and investments, retirement, and life insurance are estimated from consumer expenditure surveys and other data appropriate for Federal employee for each income level.

(c) The dollar amounts estimated for consumption, transportation, housing, and miscellaneous expenses are combined to produce a total dollar amount for renters and a total dollar amount for home owners at each income level. The dollar amounts for renters are combined with the dollar amounts for home owners for each income level by using weights, derived from appropriate consumer expenditure or census data, representing the proportion of renters and owners at each income level. The dollar amounts for each income level are weighted into one average amount to reflect the GS grade distribution for the allowance area. The average allowance area dollar amount is divided by the average Washington, DC, area dollar amount to generate a comparative cost index. The allowance rate for the area is based upon the index.

(d) OPM will describe in detail the calculation of each allowance rate at the time the rate is published in the FEDERAL REGISTER for comment.

§ 591.206 Establishment of allowance rates.

(a) OPM uses the comparative cost indexes for each allowance area to determine the allowance rates for that area. The range of values within which the index value falls determines the appropriate allowance rate, expressed as a percentage of the rate of basic pay for that category of eligible employee.

(b) The following table shows the comparative index range and corresponding allowance rate to be established for an allowance category under § 591.207 of this part:

COMPARATIVE INDEX AND ALLOWANCE RATE TABLE

Index range	Allowance rate (percent)
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

(c) Allowance area survey summaries, category indexes, and allowance rates are published as notices in the FEDERAL REGISTER.

§ 591.207 Allowance categories, eligibility, and adjustments.

(a) Section 205(b) of Executive Order 10,000, as amended, requires adjustments to allowance payments where warranted because of Federal quarters or special purchasing privileges. These adjustments occur only when the quarters or purchasing privileges are made available as a result of Federal civilian employment and result in substantially lower costs when compared to local area costs.

(1) Special purchasing privileges. Adjustments for access to commissaries and exchanges are incorporated into the comparative index calculations and the resulting allowance rates.

(2) Federal quarters. If the rent charged an employee by an agency for quarters is less than the net reasonable value rent, after appropriate adjustments, established as prescribed by the Office of Management and Budget, the difference between the rent charged and the reasonable value rent will be deducted from the allowance paid by the employing agency up to, but not exceeding, the amount of the allowance.

(b) The allowance categories that are established in each area are—

(1) "Local Retail," which applies to those Federal employees who purchase goods and services from private retail establishments.

(2) "Commissary/Exchange," which applies to those Federal employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

(c) Eligibility for access to commissary and exchange facilities is determined by the appropriate military department. Agencies shall obtain the information needed from employees to determine the applicable allowance category.

§ 591.208 Post differential.

(a) The post differential is based on:

(1) Extraordinarily difficult living conditions;

(2) Excessive physical hardship; or

(3) Notably unhealthful conditions.

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(2) Canton and Enderbury Islands.

(3) Guam.

(4) The Commonwealth of the Northern Mariana Islands.

(5) Johnston Island and Sand Island.

(6) Midway Islands and Wake Island.

(7) Christmas Island.

(c) New or revised post differential rates are published as notices in the FEDERAL REGISTER.

§ 591.209 Eligibility for a differential.

A department or agency will determine employee eligibility to receive a differential as follows:

(a) To be eligible to receive a differential:

(1) The employee must be a citizen or national of the United States;

(2) The employee's residence in the area where the differential applies must be attributable to employment by the United States; and

(3) Any prior residence in the area must be because of employment by

the United States or by U.S. firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include, but are not limited to—

(1) Those recruited or transferred from outside the area where the differential applies.

(2) Those employed in the area where the differential applies but who—

(i) Were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies contractors of Federal agencies, or international organizations in which the U.S. Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or

(ii) Were at the time of employment temporarily present in the differential area concerned for travel or formal study and maintained residence outside the area during that period.

(3) Those who are not normally residents of the area where the differential applies and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.210 Payment of allowances and differentials.

(a) Allowances and differentials under this subpart are payable to an employee whose permanent duty station is in a nonforeign area for which an allowance or differential is authorized.

(b)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials are calculated and paid as a percentage of an employee's hourly rate of basic pay for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the allowance or differential area. Allowances and differentials are included in any lump-sum payment for accumulated and current accrued annual leave issued under sections 5551 or 5552 of title 5, United States Code, to an employee who separates while in a duty status in the allowance or differential area.

(2) Payment of a differential during periods of paid leave or travel outside the differential area continues for the first 42 consecutive calendar days of the absence. Payment of allowances and differentials while absent from the post continues only if the employee returns to duty status in the area, unless the agency determines that—

(i) It is in the public interest not to return the employee to the duty station; or

(ii) The employee's failure to return to the duty station was due to compelling personal reasons or to circumstances over which the employee had no control.

(c) An employee assigned to a duty station for which both an allowance and a differential are authorized under this subpart and eligible for both will receive the full amount of the allowance, plus so much of the differential as will not cause the combined total of allowance and differential to exceed 25 percent of the hourly rate of basic pay.

(d) If an employee who is receiving an allowance or differential or both under this subpart is temporarily assigned to a duty station in a foreign area and is eligible to receive a foreign post differential authorized by the Department of State under 5 U.S.C. 5925. the employee will receive the foreign area differential, plus so much of the allowance and/or differential (in that order) authorized under this subpart as will not cause the combined total to exceed 25 percent of the hourly rate of basic pay.

(e)(1) An allowance or a differential is not part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, allowance, or differential under title 5, United States Code.

(2) An allowance or differential is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act of 1938, as amended.

(f) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(g) Payment of an allowance or differential will begin as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or differential will cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

§ 591.211 Periodic review.

In accordance with Executive Order 10,000, OPM reviews from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make warranted changes to ensure that payments under this subpart will continue only during the continuance of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

APPENDIX A OF SUBPART B—PLACES AND RATES AT WHICH ALLOWANCES SHALL BE PAID

This appendix lists the places where a cost of living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Index	Authorized allowance rate (percent)
State of Hawaii—1977		
Island of Oahu:		
Local retail/private housing	118.4	17.5
Local retail/Federal housing	102.3	
Commissary/PX/private housing	103.8	
Commissary/PX/Federal housing	87.7	
Commissary/PX/military housing	73.9	
Island of Kauai:		
Local retail/private housing	117.2	17.5
Local retail/Federal housing	107.2	7.5
Commissary/PX/private housing	116.7	17.5
Commissary/PX/Federal housing	106.7	7.5
Commissary/PX/military housing	89.0	
Island of Molokai:		
Local retail/private housing	115.4	15.0
Local retail/Federal housing	108.2	7.5
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	90.7	
Island of Maui and Island of Lanai:		
Local retail/private housing	112.2	12.5
Local retail/Federal housing	99.7	
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	86.2	
Island of Hawaii:		
Local retail/private housing	113.6	12.5
Local retail/Federal housing	99.8	
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	88.1	
State of Alaska—1976 [4]		
City of Anchorage and 50-mile radius:		
Local retail/private housing	129.2	25.0
Local retail/Federal housing	116.9	17.5
Commissary/PX/private housing	117.6	17.5
Commissary/PX/Federal housing	105.3	5.0
Commissary/PX/military housing	86.2	0
City of Fairbanks and 50-mile radius:		
Local retail/private housing	146.3	25.0
Local retail/Federal housing	140.3	25.0
Commissary/PX/private housing	129.7	25.0
Commissary/PX/Federal housing	123.8	25.0
Commissary/PX/military housing	90.8	0
City of Juneau and 50-mile radius:		
Local retail/private housing	126.5	25.0
Local retail/Federal housing	130.4	25.0
Commissary/PX/private housing	126.1	25.0
Commissary/PX/Federal housing	129.9	25.0
Commissary/PX/military housing	95.3	0
All other locations within Alaska, all employees	134.7	25.0
Commonwealth of Puerto Rico—1976		
San Juan Area: [1]		
Local retail/private housing	113.4	12.5
Local retail/Federal housing	109.1	10.0
Commissary/PX/private housing [2]	104.4	0
Commissary/PX/Federal housing [2]	100.1	0
Commissary/PX/military housing [2]	79.8	0
Outside San Juan Area:		
Local retail/private housing	105.4	5.0
Local retail/Federal housing	112.1	12.5
Commissary/PX/private housing [2]	97.1	0

Geographic coverage/allowance category	Index	Authorized allowance rate (percent)
Commissary/PX/Federal housing [2]	103.8	0
Commissary/PX/military housing [2]	77.4	0
Virgin Islands—1976		
St. Croix:		
Local retail/private housing	107.0	7.5
Local retail/Federal housing	97.3	0
Commissary/PX/private housing	([3])	
Commissary/PX/Federal housing	([3])	
Local retail/military housing	84.3	0
St. Thomas and St. John:		
Local retail/private housing	108.6	7.5
Local retail/Federal housing	98.5	0
Commissary/PX/private housing	([3])	
Commissary/PX/Federal housing	([3])	
Local retail/military housing	84.5	0
Island of Guam—1977		
Local retail/private housing	110.6	10.0
Local retail/Federal housing	102.4	
Commissary/PX/private housing	98.2	
Commissary/PX/Federal housing	90.0	
Commissary/PX/military housing	68.7	

[1] The "San Juan Area" is defined as the San Juan Standard Metropolitan Statistical Area. This area has been defined by the Office of Management and Budget to consist of the municipios of Canovanas, Loiza, Toa Baja, Bayamon, Guaynabo, Carolina, Trujillo Alto, San Juan, and all localities included therein. Employees whose duty stations are located in this area will receive cost of living allowances based on the rates authorized for the "San Juan" Area. All other employees will receive cost of living allowances based on the rates authorized for the "Outside San Juan" area.

[2] For allowance areas in Puerto Rico, the Commissary/PX will apply to those employees who have such purchasing privileges and whose duty stations are located within a 50-mile radius by road from a major commissary/PX facility. Currently the only facilities in Puerto Rico which qualify as "major" are Fort Buchanan and Roosevelt Roads. All employees whose duty stations are outside this 50-mile radius will receive an allowance based on the appropriate local retail rate.

[3] Where an index is "not applicable", the appropriate local retail index and rate apply depending on type of housing occupied.

[4] The results of the 1976 annual review for the State of Alaska do not include the Juneau area. It was necessary to conduct a separate survey of Juneau and as a result, the annual review findings for that location will be announced at a later date. Until that time, the 1975 index and allowance rate for Juneau will remain in effect.

DEFINITIONS OF ALLOWANCE CATEGORIES

The following definitions of the various allowance categories identified in the tables in this attachment shall be used in determining employee eligibility for the appropriate allowance rate:

Allowance category	*Definition*
Local Retail/Private Housing.	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are privately owned or rented.
Local Retail/Federal Housing.	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/Private Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are privately owned or leased.
Commissary/PX/Federal Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/Military Housing.	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy either on-base military housing units or off-base housing for which a housing allowance is paid under the military housing program.

NOTE: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. Identification cards are issued to each individual authorized to use the facilities and this identification would indicate any limitation on purchases. Agencies should adopt whatever methods are appropriate to obtain from employees the information needed to determine the applicable allowance category and the corresponding allowance to be paid.

(5 U.S.C. 5941; E.O. 10,000, 3 CFR 1943-48 Comp., p. 792; E.O. 11938, 3 CFR 1976 Comp., pp. 148-149)

[41 FR 51579, Nov. 23, 1976; 41 FR 53969, Dec. 10, 1976, as amended at 42 FR 54555, Oct. 7, 1977; 42 FR 64336, Dec. 23, 1977; 43 FR 12293, Mar. 24, 1978]

APPENDIX B OF SUBPART B—PLACES AND RATES AT WHICH DIFFERENTIALS SHALL BE PAID

This appendix lists the places where a post differential has been approved and shows the differential rate to be paid to eligible employees. The differential percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage	Percentage differential rate	Effective date
American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171° west of Greenwich, together with Swains Island).	25	June 8, 1975
Canton Island	25	Do
Christmas Island	25	Do
Commonwealth of the Northern Mariana Islands.	25	Dec. 21, 1986
Guam	20	Jan. 1, 1975
Johnston or Cornwallis Island, and Sand Island.	25	June 8, 1975
Midway Islands	25	Do
Wake Island	25	Do

[41 FR 51579, Nov. 23, 1976; 41 FR 52857, Dec. 2, 1976; 41 FR 53461, Dec. 7, 1976; 52 FR 12131, Apr. 15, 1987]

Subpart C—Allowance Based on Duty at Remote Worksites

AUTHORITY: 5 U.S.C. 5942; sec. 8, E.O. 11609, 3 CFR 1971-1975 Comp., p. 591; 5 U.S.C. 1104, Pub. L. 95-454, 92 Stat. 1120 and Sec. 3(5) of Pub. L. 95-454; 92 Stat. 1120.

SOURCE: 44 FR 55134, Sept. 25, 1979, unless otherwise noted.

§ 591.301 Purpose.

This subpart prescribes the regulations required by section 5942 of title 5, United States Code, for the payment of an allowance based on duty at remote worksites.

§ 591.302 Coverage.

(a) *Agencies.* This subpart applies to executive departments as defined in section 101 of title 5, United States Code, and to independent establishments as defined in section 104 of title 5, United States Code, but does not apply to Government corporations as defined in section 103 of title 5, United States Code.

(b) *Employee.* This subpart applies to each employee assigned to a permanent duty station at or within a designated remote duty post, except an employee who is a permanent or temporary resident at the remote duty post, and except foreign nationals employed at remote duty posts in foreign countries.

§ 591.303 Responsibilities of agencies and the Office of Personnel Management.

(a) Each agency is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(1) of § 591.304, as restricted by paragraph (b) of § 591.304;

(2) Advising the Office of Personnel Management of each establishment or adjustment of an allowance under paragraph (a)(1) of this section, and of the basis for such establishment or adjustment;

(3) Submitting a recommendation to the Office of Personnel Management to establish or adjust an allowance for each remote duty post at which the agency has employees and which meets the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of § 591.304; and

(4) Advising the Office of Personnel Management in a timely manner of any changes in a duty post or commuting conditions or other factors that may affect an allowance that has been authorized by the Office of Personnel Management under paragraph (b) of this section.

(b) The Office of Personnel Management is responsible for:

(1) Establishing and subsequently adjusting, in accordance with the provisions of this subpart, an allowance for each remote duty post which does not meet the criteria in paragraph (a)(1) of § 591.304, but does meet the criteria in paragraph (a)(2) or (a)(3) or paragraph (c) of § 591.304;

(2) Reviewing each establishment or adjustment of an allowance by an agency under paragraph (a)(1) of this section to determine if such establishment or adjustment is in accordance with the provisions of this subpart; and

(3) Directing the termination or adjustment of any allowance determined by the Office to be not in accordance with the provisions of this subpart, which termination or adjustment shall be implemented by the agency without delay.

(c) Each allowance which has been authorized by the Office of Personnel Management or the Civil Service Commission on or before February 1, 1979, and which is authorized for a remote duty post which meets the criteria in paragraph (a)(1) of § 591.304, shall be subject to further adjustment by the agency under paragraph (a)(1) of this section as if such allowance had been initially authorized by the agency under that paragraph.

§ 591.304 Criteria for determining remoteness.

(a) Except as provided by paragraphs (b) and (c) of this section, a duty post shall be determined to be a remote duty post for basic allowance eligibility purposes when:

(1) Normal ground transportation (e.g., automobile, train, bus) is available on a daily basis and the duty post is 50 miles, or more, one way from the nearest established community or suitable place of residence. Distance shall be computed in road or rail miles over the most direct route traveled from the center of the city, or other appropriate point for large cities or areas; or

(2) Daily commuting is impractical because the location of the duty post and available transportation are such that agency management requires employees to remain at the duty post for their workweek as a normal and continuing part of the conditions of employment; or

(3) Transportation may be accomplished only by boat, aircraft, or unusual conveyance, or under extraordinary conditions, and the distance, time, and commuting conditions result in expense, inconvenience, or hardship significantly greater than that encountered in metropolitan area commuting. A determination may only be made on an individual location basis.

(b) Except when the criteria in paragraph (a)(2) or (3) of this section are met, the criteria in paragraph (a)(1) of this section are not met:

(1) When the duty post is within the boundary of a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities; and

(2) When the duty post is within 50 miles of the center of, or other appropriate point for large cities or areas, a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities. (This generally excludes a post of duty within 50 miles of any city of 5,000 or more population.)

(c) A determination of remoteness for a duty post outside the 50 United States will be made on an individual location basis, taking into consideration the distance, time, and commuting conditions, and the extent to which these factors result in significant expense, inconvenience, or hardship.

§ 591.305 Allowance rates.

(a) *General.* An allowance rate may not exceed $10 a day. An allowance rate shall be established for each post of duty determined to be remote under § 591.304, and shall be terminated or adjusted as warranted. In determining the amount of the allowance rate, the following shall be considered:

(1) Transportation expenses incurred in commuting to the remote post of duty as compared to transportation expenses (including cost of public transportation service) representative of those incurred in metropolitan areas within the United States or overseas as appropriate as periodically determined by the Office of Personnel Management.

(2) Expenses incurred for lodging, meals, other services, and miscellaneous expenses when it is not feasible for an employee to commute daily as at duty posts determined under § 591.304(a)(2).

(3) Inconvenience or hardship associated with commuting to the remote

duty post taking into account such factors as travel time, road conditions and terrain, type and quality of vehicle, and climate conditions, and conditions that exist at those duty posts determined by the Office of Personnel Management to meet the criteria in § 591.304(a)(2).

(4) Operational or workload demands, weather conditions, or other situations which require an employee to report to or remain at this post of duty substantially beyond his or her normal arrival or departure time with respect to those duty posts meeting the criteria in § 591.304(a)(2).

(b) *Authorized allowance rates.* Each authorized allowance rate for each duty post may consist of up to three parts, separately stated as appropriate, and the authorized allowance rate shall be paid as provided in § 591.306, but no employee may be paid more than $10 a day. The parts which make up the authorized allowance rate are:

(1) *Transportation allowance*—(i) *Commuting by private motor vehicle.* A transportation allowance schedule showing the daily transportation expense rate to be paid under the distances and conditions described, when commuting by private motor vehicle is set out as Appendix A to this subpart and is incorporated in and made part of this section.

(ii) *Travel by commercial or Government-provided transportation.* The transportation allowance shall be limited to the cost of the service less normal cost for public transportation service in metropolitan areas.

(2) *Inconvenience or hardship allowance.* An allowance rate to compensate for hardship or inconvenience may not be considered unless the travel time normally exceeds one hour one way between the closest established community or suitable place or residence and the remote duty post. An allowance schedule covering land travel by motor vehicle, showing the daily rates to be paid under the time factors and conditions described, for inconvenience or hardship combined, is set out as Appendix B to this subpart and is incorporated in and made part of this section.

(3) *Other commuting situations.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, when commuting is by boat, aircraft or an unusual conveyance, or under extraordinary conditions by motor vehicle, or involving factors or conditions unique to the duty post, the Office of Personnel Management shall establish the allowance based on the facts and circumstances of that individual remote duty post.

(4) *Miscellaneous.* When daily commuting is impractical as determined under § 591.304(a)(2):

(i) The Office of Personnel Management may authorize a miscellaneous allowance, the amount to depend on such factors as miscellaneous expenses, living conditions that exist at the duty post, or inconvenience or hardship that may be associated with this type of employment environment. When employees are required to pay a fee for lodging, meals, or other services at the remote duty post, the miscellaneous allowance shall at least equal the amount charged for the use of facilities and services.

(ii) On those days when operational or workload demands, weather conditions, or other situations result in employees reporting to or remaining at the remote duty post substantially beyond normal arrival or departure time, the maximum daily allowance rate of $10 shall be paid.

§ 591.306 Employee eligibility for an allowance.

(a) An authorized allowance rate shall be paid to each employee with a permanent duty station at or within a remote post of duty approved under § 591.304, regardless of type of appointment or work schedule, only (1) when the employee travels the prescribed minimum distance and time, or is subject to prescribed minimum inconvenience or hardship factors, while commuting from the nearest established community or suitable place of residence and the remote duty post, or (2) the employee remains at the worksite at the direction of management because daily commuting is impractical.

(b) An employee shall be paid an authorized allowance rate for those days on which he or she incurs unusual expense in commuting to a remote post of duty or for those days on which he or she is subject to extraordinary inconvenience or hardship during the commuting.

(c) An employee who resides permanently, or temporarily for his or her own convenience at a remote duty post is not eligible for an authorized allowance rate during his or her period of residence.

§ 591.307 Payment of allowance rate.

(a) An authorized allowance rate is earned on a daily basis; however, where appropriate for administrative convenience, the rate may be averaged taking into consideration the number of noncommuting days over a period of time, and paid for each workday, excluding days in a nonpay status and period of extended absence.

(b) The transportation allowance is paid only when expense is incurred and at the lowest rate consistent with available transportation.

(c) The inconvenience or hardship allowance is paid regardless of eligibility for the transportation expense part of the allowance rate when the employee is otherwise eligible.

(d) Except as provided under § 591.305(b)(4)(ii), when the necessity for remaining at the post of duty for the workweek is the basis for the allowance under § 591.304(a)(2), the allowance rate is paid for each full day, or prorated for each part of a day, that the employee remains at the duty post.

(e) The transportation allowance prescribed by paragraph (b)(1)(i) of § 591.305, or other allowance as may be prescribed for commuting by private motor vehicle, may not be paid unless the officially approved work schedule of the employee precludes use of the transportation services that may be available at lower cost.

(f) An employee, who normally commutes on a daily basis, will not be disqualified from receiving an authorized allowance when he or she is officially required to remain overnight at the remote duty post, for one or more days on a temporary basis, because of the schedule of operations or the nature of assigned work.

(g) When a remote duty post is determined by the Office of Personnel Management under paragraph (a)(3) or (c) of § 591 304 as being basically eligible for an allowance, the Office of Personnel Management will determine the basis for payment of the allowance rate taking into consideration the facts and circumstances associated with commuting to the remote duty post.

§ 591.308 Relationship to additional pay payable under other statutes.

An allowance authorized under this subpart is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

§ 591.309 Effective date for payment of allowances.

When an allowance is authorized for a remote duty post, the authorization shall specify the effective date that an agency shall begin paying the allowance to its employees, except that a date earlier than January 8, 1971, may not be specified.

§ 591.310 Effect of regulations in this subpart on allowances established under previous statutes.

Regulations in this subpart do not require a reduction in the allowance rates authorized under previous statutes unless an adjustment is determined to be warranted on the basis of a change in facts and circumstances on which that previous allowance was established.

APPENDIX A OF SUBPART C—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS

SCHEDULE I—EFFECTIVE JANUARY 8, 1971, THROUGH JULY 12, 1975

Round trip distance in excess of 50 miles	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 9 miles	$0.20	$0.22	$0.24
10 to 19	.70	.77	.84
20 to 29	1.20	1.32	1.44
30 to 39	1.70	1.87	2.04
40 to 49	2.20	2.42	2.64
50 to 59	2.70	2.97	3.24
60 to 69	3.20	3.52	3.84
70 to 79	3.70	4.07	4.44
80 to 89	4.20	4.62	5.04
90 to 99	4.70	5.17	5.64
100 to 109	5.20	5.72	6.24
110 to 119	5.70	6.27	6.84
120 to 129	6.20	6.82	7.44
130 to 139	6.70	7.37	8.04
140 to 149	7.20	7.92	8.64
150 to 159	7.70	8.47	9.24
160 to 169	8.20	9.02	9.84
170 and over	8.70	9.57	[1] 10.00

[1] See footnote at end of Schedule II.

SCHEDULE II—EFFECTIVE ON OR AFTER JULY 13, 1975

Round trip distance in excess of 50 miles	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 9 miles	$0.30	$0.32	$0.34
10 to 19	1.05	1.12	1.19
20 to 29	1.80	1.92	2.04
30 to 39	2.55	2.72	2.89
40 to 49	3.30	3.52	3.74
50 to 59	4.13	4.32	4.68
60 to 69	4.80	5.12	5.44
70 to 79	5.55	5.92	6.29
80 to 89	6.30	6.72	7.14
90 to 99	7.05	7.52	7.99
100 to 109	7.80	8.32	8.84
110 to 119	8.55	9.12	9.69
120 to 129	9.30	9.92	[1] 10.00
130 to 139	[1] 10.00	[1] 10.00	[1] 10.00
140 to 149	[1] 10.00	[1] 10.00	[1] 10.00
150 to 159	[1] 10.00	[1] 10.00	[1] 10.00
160 to 169	[1] 10.00	[1] 10.00	[1] 10.00
170 and over	[1] 10.00	[1] 10.00	[1] 10.00

[1] Under the statute, $10 a day is the maximum allowance.

SCHEDULE III—EFFECTIVE ON OR AFTER DECEMBER 28, 1980

Round trip distance in excess of 50 miles	Degree A	Degree B	Degree C
Up to 9 miles	$0.40	$0.42	$0.44
10 to 19	1.40	1.47	1.54
20 to 29	2.40	2.52	2.64
30 to 39	3.40	3.57	3.74
40 to 49	4.40	4.62	4.84
50 to 59	5.40	5.67	5.94
60 to 69	6.40	6.72	7.04
70 to 79	7.40	7.77	8.14
80 to 89	8.40	8.82	9.24
90 to 99	9.40	9.87	10.00
100 to 109	[1] 10.00	[1] 10.00	[1] 10.00
110 to 119	10.00	10.00	10.00
120 to 129	10.00	10.00	10.00
130 to 139	10.00	10.00	10.00
140 to 149	10.00	10.00	10.00
150 to 159	10.00	10.00	10.00
160 to 169	10.00	10.00	10.00
170 and over	10.00	10.00	10.00

[1] Under the statute, $10 a day is the maximum allowance.

Degree A Commuting Conditions

Good paved roads; climatic conditions cause intermittent driving difficulty.

Degree B Commuting Conditions

Roads typically fair but may be good for part of distance or may be unpaved for short distances; climatic conditions during part of a season, in relation to terrain, contribute to additional cost.

Degree C Commuting Conditions

Fair to poor roads; unpaved for part of distance, or travel over range; hilly or mountainous terrain; climatic conditions during most of a season contribute to additional cost.

[44 FR 55134, Sept. 25, 1979, as amended at 45 FR 76087, Nov. 18, 1980]

APPENDIX B OF SUBPART C—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

Round trip distance in excess of 2 hours	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
up to 15 minutes	$0.50	$0.63	$0.75
16 to 30	1.00	1.25	1.50
31 to 45	1.50	1.88	2.25
46 to 60	2.00	2.50	3.00
61 to 75	2.50	3.13	3.75
76 to 90	3.00	3.75	4.50

ound trip distance in excess of 2 hours	Degree A commuting conditions	Degree B commuting conditions	Degree C commuting conditions
to 105	3.50	4.38	5.25
6 to 120	4.00	5.00	6.00
1 to 135	4.50	5.63	6.75
6 to 150	5.00	6.25	7.50
1 to 165	5.50	6.88	8.25
6 to 180	6.00	8.13	9.00

Degree A Commuting Conditions

Good paved roads; climatic conditions, in lation to type and quality of vehicle, cause inimal discomfort during trip.

Degree B Commuting Conditions

Roads typically fair, but may be good for rt of distance and possibly unpaved for ort distances; climatic conditions during rt of a season, in relation to type and uality of vehicle, result in moderate dis- mfort during trip.

Degree C Commuting Conditions

Fair to poor roads, unpaved for part of istance, climatic conditions during most of season, in combination with such factors s type and quality of vehicle and terrain, esult in unusual discomfort during trip.

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

ec.

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AUTHORITY: 5 U.S.C. 5948; E.O. 12109, 44 R 1067, Jan. 3, 1979.

SOURCE: 44 FR 40876, July 13, 1979, unless therwise noted.

595.101 General.

Section 5948 of title 5, United States Code, authorizes the payment of al- owances to certain eligible Federal physicians who enter into service greements with their agencies. These llowances are paid only in the case of ategories of physicians for which the gency is experiencing recruitment and retention problems, and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of the Office of Personnel Management, acting in consultation with the Director of the Office of Management and Budget. This part contains the regulations, criteria, and conditions which the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians' comparability allowance program. This part supplements and implements the provisions of 5 U.S.C. 5948, and must be read together with that section of law.

§ 595.102 Coverage and exclusions.

(a) Subsection (g)(1) of 5 U.S.C. 5948 defines those covered by the physicians' comparability allowance program as individuals employed as physicians under certain Federal pay systems listed in that subsection. For the purposes of this part, an individual is "employed as a physician" only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) In addition to individuals covered by the pay systems listed in subsection (g)(1) of 5 U.S.C. 5948, the physicians' comparability allowance program covers individuals employed as physicians and paid under subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service, or Chapter 54 of that title, relating to the Performance Management and Recognition System.

(c) Subsection (b) of 5 U.S.C. 5948 prohibits the payment of physicians' comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of that subsection, a "reemployed annuitant" means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee in the civil service.

[44 FR 40876, July 13, 1979, as amended at 50 FR 11799, Mar. 25, 1985; 50 FR 35494, Aug. 30, 1985]

§ 595.103 Establishment of categories of physicians.

(a) Under subsection (c) of 5 U.S.C. 5948, the head of each agency employing physicians is required to determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

(b) In determining categories of physician positions, the head of each agency must, as a minimum, establish as separate categories the following types of positions:

(1) Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventive, or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers, and similar settings, but not including positions described in paragraph (b)(3) of this section;

(2) Positions primarily involving the conduct of medical research and experimental work, including the conduct of medical work pertaining to food, drugs, cosmetics, and devices (or the review or evaluation of such medical research and experimental work), or the identification of causes or sources of disease or disease outbreaks;

(3) Positions primarily involving the evaluation of physical fitness, or the provision of initial treatment of on-the-job illness or injury, or the performance of preemployment examinations, preventive health screenings, or fitness-for-duty examinations; and

(4) Positions not described by paragraph (b) (1), (2), or (3) of this section, including positions involving disability evaluation and rating, the performance of medicolegal autopsies, training activities, or the administration of medical and health programs, including the administration of patient care or medical research and experimental programs.

(c) The agency head may establish as separate categories any additional subdivisions of these four categories of positions, based on any factors the agency head determines relevant. These may include such factors as the location, grade or level, and medical specialization of the positions, and the level of qualifications sought by the agency for physicians in the category.

§ 595.104 Determination of recruitment and retention problem.

A significant recruitment and retention problem shall be considered to exist for each category of physician position established under § 595.103 of this part only if the four following conditions are met with respect to the category:

(a) Such evidence as vacant positions, an unacceptably high turnover rate, or other positive evidence indicates that the agency is unable to recruit and retain physicians for the category;

(b) The qualification requirements being used as a basis for considering candidates for the vacant positions in the category do not exceed the qualifications that are actually necessary for successful performance of the work of the positions in the category;

(c) The agency has made efforts to recruit qualified candidates for any vacant positions in the category and to retain physicians presently employed in positions in the category; and

(d) A sufficient number of qualified candidates is not available to fill the existing vacancies in the category at the rate of pay the agency may offer if no comparability allowance is paid.

§ 595.105 Determination of amount of comparability allowance.

(a) The amount of the comparability allowance payable for each category of physician position established under § 595.103 of this part must be the minimum amount necessary to deal with the recruitment and retention problem identified under § 595.104 of this part for that category of position. In determining this amount, the agency head shall consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of

nployment, and personnel benefits
r physicians in each category and
r comparable physicians inside and
itside the Federal Government.

(b) Under the subsection (a) of 5
.S.C. 5948, the comparability allow-
nce payable to any Government phy-
cian may not exceed $14,000 per
nnum for a physician who has served
s a Government physician for 24
onths or less, or $20,000 per annum
r a physician who has served as a
overnment physician for more than
1 months. For the purpose of deter-
ining a physician's length of service
r this requirement, prior service as a
overnment physician need not have
een continuous, but any periods of
ave without pay may not be counted
s service.

(c) Subsection (a) of 5 U.S.C. 5948
llows that for the purpose of deter-
ining length of service as a Govern-
ent physician, service as a physician
n the Veterans Administration, under
ections 4104 or 4114 of Title 38, or
ctive service as a medical officer in
he Commissioned Corps of the Public
lealth Service, under Title II of the
ublic Health Service Act (42 U.S.C.
h. 6A), would be deemed service as a
overnment physician. Physicians
urrently employed under title 38 in
he Veterans Administration or under
itle 42 as Commissioned Corps offi-
ers of the Public Health Service are
ot eligible for the allowances provid-
d in 5 U.S.C. 5948.

(d) Under subsection (b)(1) of 5
.S.C. 5948, a physician who is em-
loyed on less than a half-time or
ntermittent basis is excluded from
he physicians' comparability allow-
nce program altogether. a physician
ho is employed on a regularly sched-
led part-time basis of half-time or
nore is eligible to receive an allowance
n accordance with this part, but any
uch allowance shall be prorated ac-
ording to the proportion of the physi-
ians' work schedule to full-time em-
loyment.

(e) A physician who is serving with
he Government under a loan repay-
nent program shall have the amount
f loan being repaid deducted from
ny allowance for which he or she is
ligible in accordance with this part,
nd may receive only that portion of such allowance which exceeds the amount of loan being repaid by service during the period in question.

[44 FR 40876, July 13, 1979, as amended at 53 FR 8141, Mar. 14, 1988, and 53 FR 24011, June 27, 1988]

§ 595.106 Termination of service agreement.

(a) Under subsection (f) of 5 U.S.C. 5948, each service agreement entered into by an agency and a physician under the comparability allowance program may prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than one year, the service agreement must include a provision that, if the physician completes more than one year of service pursuant to the agreement, but fails to complete the full period of service specified in the agreement either voluntarily or because of misconduct by the physician, the physician shall be required to refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

§ 595.107 Approval of agency plans.

(a) An agency may not enter into any service agreement under 5 U.S.C. 5948 until the agency's plan for implementing the physicians' comparability allowance program has been submitted to and approved by the Office of Management and Budget in accordance with this section and such instructions as the Office of Management and Budget may prescribe.

(b) The agency shall submit to the Office of Management and Budget a complete description of its plan for implementing the physicians' comparability allowance program, including the following:

(1) An identification of the categories of physician positions that the agency has established under § 595.103 of this part, and of the basis for such categories;

(2) An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in § 595.104 of this part; and

(3) An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under § 595.105 of this part.

(c) The Office of Management and Budget shall review each agency's description of its plan for implementing the physicians' comparability allowance program and determine if the plan is consistent with the provisions of 5 U.S.C. 5948 and the requirements of this part, and shall advise the agency within 45 calendar days of receipt of the agency's plan by the Office of Management and Budget whether the plan is so consistent or what changes need to be made in the agency's plan to make it so consistent.

[44 FR 40876, July 13, 1979, as amended at 53 FR 8142, Mar. 14, 1988, and 53 FR 24011, June 27, 1988]

§ 595.108 Reports.

(a) Because of the experimental and temporary nature of the physicians' comparability allowance program, it will be necessary for the Office of Personnel Management to collect information on the administration of the program by the agencies, and on the effects the program has on the recruitment and retention of Government physicians. The Office of Personnel Management will prescribe the number, contents, timing, and format of the reports necessary to collect this information, and every agency using the physicians' comparability allowance program is required to submit such reports as the Office may prescribe. These reports must include, among other things, the following:

(1) A listing of the amount of allowance actually paid to the agency's physicians; and

(2) An assessment of the effect of the physicians' comparability allowance program on the agency's recruitment and retention of physicians.

(b) The Central Intelligence Agency and the National Security Agency are not subject to the requirements of this section.

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

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SOURCE: 33 FR 12474, Sept. 4, 1968, unless otherwise noted.

Subpart A—Weekly and Daily Scheduling of Work

AUTHORITY: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964—1965 Comp., p. 317.

§ 610.101 Coverage.

This subpart applies to each employee to whom Subpart A of Part 550 applies and to each employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of title

5, United States Code, or by a wage board or similar administrative authority serving the same purpose.

[42 FR 3297, Jan. 18, 1977]

§ 610.102 Definitions.

In this subpart:

(a) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of an agency under section 6101 of title 5, United States Code.

(b) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(c) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111.

(d) "Agency" means an Executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(e) "Head of agency" means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

(f) "Employee" means an employee of an agency to whom this subpart applies.

(g) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111.

(h) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12474, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983]

WORKWEEK

§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation shall specify the days and hours within the administrative workweek that constitute the basic workweek.

(2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b), (c), and (d) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime work.

(c) (1) When an employee is paid additional pay under section 5545(c)(1) of title 5, United States Code, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week.

(2) When an employee has a tour of duty which includes a period during

which he remains at or within the confines of his station in a standby status rather than performing actual work his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including time in a standby status except that allowed for sleep and meals by regulation of the agency.

(d) When the head of an agency establishes a flexible or compressed work schedule under section 6122 or section 6127 of title 5, United States Code, he or she shall establish a basic work requirement for each employee as defined in section 6121 of title 5, United States Code. A flexible or compressed work schedule is a scheduled tour of duty and all work performed by an employee within the basic work requirement is considered regularly scheduled work for premium pay and hours of duty purposes.

(5 U.S.C. 5548 and 6101(c))

[33 FR 12474, Sept. 4, 1968, as amended at 48 FR 3934, Jan. 28, 1983; 48 FR 44060, Sept. 27, 1983]

WORK SCHEDULES

§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b)(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work.

(3) If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b) (1) and (2) of this section, the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work under Subpart A of Part 550 of this chapter. In this regard, it must be determined that the head of the agency: (i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

(5 U.S.C. 5548 and 6101(c))

[48 FR 3935, Jan. 28, 1983]

§ 610.122 Variations in work schedules for educational purposes.

(a) Notwithstanding § 610.121, the head of an agency may authorize a special tour of duty of not less than 40 hours to permit an employee to take one or more courses in a college, university, or other educational institution when it is determined that:

(1) The courses being taken are not training under chapter 41 of title 5, United States Code;

(2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;

(3) Additional costs for personal services will not be incurred; and

(4) Completion of the courses will equip the employee for more effective work in the agency.

(b) The agency may not pay to the employee any premium pay solely because the special tour of duty authorized under this section causes the employee to work on a day, or at a time during the day, for which premium pay would otherwise be payable.

(c) OPM may from time to time request an agency to report on the use of this authority.

§ 610.123 Travel on official time.

Insofar as practicable travel during nonduty hours shall not be required of an employee. When it is essential that this be required and the employee may not be paid overtime under § 550.112(e) of this chapter the official concerned shall record his reasons for ordering travel at those hours and shall, upon request, furnish a copy of his statement to the employee concerned.

Subpart B—Holidays

AUTHORITY: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317.

§ 610.201 Identification of holidays.

In this subpart, "holiday" has the same meaning given that word in section 2(a) of Executive Order 11582.

[42 FR 3297, Jan. 18, 1977]

§ 610.202 Determining the holiday.

For purposes of pay and leave, the day to be treated as a holiday is determined as follows:

(a) When a holiday falls on a workday in an employee's basic workweek (as defined in § 610.102(c)), that workday is his or her holiday.

(b) When a holiday falls on a nonworkday outside an employee's basic workweek, the day to be treated as his or her holiday is determined in accordance with section 6103(b) of title 5, United States Code, and Executive Orders 11582.

[42 FR 3297, Jan. 18, 1977]

Subpart C—Administrative Dismissals of Daily, Hourly, and Piecework Employees

AUTHORITY: 5 U.S.C. 6104; E.O. 10552, 3 CFR, 1954-1958 Comp., p. 201.

§ 610.301 Purpose.

The purpose of this subpart is to provide uniform and equitable standards under which regular employees paid at daily, hourly, or piecework rates may be relieved from duty with pay by administrative order.

§ 610.302 Policy statement.

The authority in this subpart may be used only to the extent warranted by good administration for short periods of time not generally exceeding 3 consecutive work days in a single period of excused absence. This authority may not be used in situations of extensive duration or for periods of interrupted or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart shall provide benefits for regular employees paid at daily, hourly, or piecework rates similar to those provided for employees paid at annual rates.

§ 610.303 Definitions.

In this subpart:

(a) "Administrative order" means an order issued by an authorized official of an agency relieving regular employees from active duty without charge to leave or loss of pay.

(b) "Regular employees" means employees paid at daily, hourly, or piecework rates who have a regular tour of duty, and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

§ 610.304 Coverage.

This subpart applies to regular employees of the Federal Government paid at daily, hourly, or piecework rates. This subpart does not apply to experts and consultants.

§ 610.305 Standards.

An administrative order may be issued under this subpart when:

(a) Normal operations of an establishment are interrupted by events beyond the control of management or employees;

(b) For managerial reasons, the closing of an establishment or portions thereof is required for short periods; or

(c) It is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging.

(d) The circumstances are such that an administrative order under paragraph (a), (b), or (c) of this section is not appropriate and the agency under its regulations excuses, or is authorized to excuse, without charge to leave or loss of pay, employees paid on an annual basis.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

§ 610.306 Supplemental regulations.

Each agency is authorized to issue supplemental regulations not inconsistent with this subpart.

[33 FR 12474, Sept. 4, 1968, as amended at 34 FR 2479, Feb. 21, 1969]

Subpart D—Flexible and Compressed Work Schedules

AUTHORITY: 5 U.S.C. 6133(a).

SOURCE: 48 FR 44060, Sept. 27, 1983, unless otherwise noted.

§ 610.401 General.

This subpart contains regulatory requirements prescribed by the Office of Personnel Management to implement certain provisions of subchapter 11 of chapter 61 of title 5, United States Code. These regulations supplement that subchapter and must be read together with it.

§ 610.402 Coverage.

The regulations contained in this subpart apply only to flexible work schedules and compressed work schedules established under subchapter 11 of chapter 61 of title 5, United States Code.

§ 610.403 Definitions.

In this subpart "Agency" and "Employee" have the meaning given these terms in section 6121 of title 5, United States Code.

§ 610.404 Requirement for time-accounting method.

An agency that authorizes a flexible work schedule or a compressed work schedule under this subpart shall establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.

§ 610.405 Holiday for part-time employees on flexible work schedules.

If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours. When a holiday falls on a nonworkday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.406 Holiday for employees on compressed work schedules.

(a) If a full-time employee is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day.

(b) If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day. When a holiday falls on a nonworkday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

An employee on a compressed schedule who performs work on a holiday is entitled to basic pay, plus premium pay at a rate equal to basic pay, for the work that is not in excess of the employee's compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime pay under applicable provisions of law and a part-time employee is entitled to straight time pay or overtime pay, depending on whether the excess hours are nonovertime hours or overtime hours.

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630.1015 Movement between voluntary leave bank program and voluntary leave transfer program.
630.1016 Termination of voluntary leave bank program.

AUTHORITY: 5 U.S.C. 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100-566; Subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100-566.

SOURCE: 33 FR 12475, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 630.101 Responsibility for administration.

The head of an agency having employees subject to this part is responsible for the proper administration of this part so far as it pertains to employees under his jurisdiction, and for maintaining an account of leave for each employee in accordance with methods prescribed by the General Accounting Office.

[34 FR 13655, Aug. 26, 1969]

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term "temporary employee engaged in construction work at an hourly rate" means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid at an hourly rate.

(b) In Subparts B through G of this part:

(1) "Accrued leave" means the leave earned by an employee during the current leave year that is unused at any given time in that leave year.

(2) "Accumulated leave" means the unused leave remaining to the credit of an employee at the beginning of a leave year.

(3) "Contagious disease" means a disease which is ruled as subject to quarantine, requires isolation of the patient, or requires restriction of movement by the patient for a specified period as prescribed by the health authorities having jurisdiction.

(4) "Employee" means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

(5) "Leave year" means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

(6) "Medical certificate" means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

(7) "United States" means the several States and the District of Columbia.

[33 FR 12475, Sept. 4, 1968, as amended at 34 FR 13655, Aug. 26, 1969]

§ 630.202 Full biweekly pay period; leave earnings.

(a) *Full-time employees.* A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status.

(b) *Part-time employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee.

[33 FR 12475, Sept. 4, 1968, as amended at 55 FR 6595, Feb. 26, 1990]

§ 630.203 Pay periods other than biweekly.

An employee paid on other than a biweekly pay period basis earns leave on a pro rata basis for a full pay period.

§ 630.204 Fractional pay periods.

When an employee's service is interrupted by a non-leave-earning period, he earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment.

§ 630.205 Change in length of day.

When the number of hours of duty n a full-time employee's workday is permanently changed, the leave to his credit is converted to the proper number of hours based upon the new workday.

§ 630.206 Minimum charge.

(a) Unless an agency establishes a minimum charge of less than one hour, or establishes a different minimum charge through negotiations, the minimum charge for leave is one hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave.

(b) When an employee is charged with leave for an unauthorized absence or tardiness the agency may not require him to perform work for any part of the leave period charged against his account.

[33 FR 12475, Sept. 4, 1968, as amended at 38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

§ 630.207 Travel time.

The travel time granted an employee under section 6303(d) of title 5, United States Code, is inclusive of the time necessarily occupied in traveling to and from his post of duty and (a) the United States, or (b) his place of residence, which is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee shall designate his place of residence in his request for leave under section 6303(d) of title 5, United States Code.

§ 630.208 Reduction in leave credits.

(a) When the number of hours in a nonpay status in a full-time employee's leave year equals the number of basepay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop those hours at the end of the employee's leave year. For the purpose of determining the reduction of leave credits under this paragraph when an employee has one or more breaks in service during a leave year, the agency shall include all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accures) for each period of service during the leave year in which annual leave accrued.

(b) An employee who is in a nonpay status for his entire leave year does not earn leave.

(c) When a reduction in leave credits results in a debit to an employee's annual leave account at the end of a leave year, the agency shall:

(1) Carry the debit forward as a charge against the annual leave to be earned by the employee in the next leave year; or

(2) Require the employee to refund the amount paid him for the period covering the excess leave that resulted in the debit.

(d) A period covered by an employee's refund for unearned advanced leave is deemed not a nonpay status under this section.

§ 630.209 Refund for unearned leave.

(a) When an employee who is indebted for unearned leave is separated, the agency shall:

(1) Require him to refund the amount paid him for the period covering the leave for which he is indebted; or

(2) Deduct that amount from any pay due him.

An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

(b) This section does not apply when an employee:

(1) Dies;

(2) Retires for disability; or

(3) Resigns or is separated because of disability which prevents him from returning to duty or continuing in the service, and which is the basis of the separation as determined by his agency on medical evidence acceptable to it.

§ 630.210 Uncommon tours of duty.

An agency having employees who work 24-hour shifts or other uncommon tours of duty may prescribe supplemental regulations consistent with subchapter I of chapter 63 of title 5, United States Code, and this part for administering leave for these employees.

§ 630.211 Exclusion of Presidential appointees.

(a) *Authority.* Section 6301(2)(xi) of title 5, United States Code, authorizes the exclusion of certain Presidential appointees in the executive branch or the government of the District of Columbia from the annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, and from the related provisions of this part. This authority does not apply to Presidential appointees paid more than the rate for GS-18, who are excluded from the leave provisions by 5 U.S.C. 6301(2)(x), nor does it apply to United States Attorneys or United
States Marshals, who may not be
cluded from the leave provisions.
President, by Executive Order 105
as amended, has delegated to
Office of Personnel Management
responsibility for making exclusi
under section 6301(2)(xi), and
Office of Personnel Management de
gated responsibility to the heads
agencies in accordance with the pro
sions of this section.

(b) *Criteria for exclusions.* The he
of an agency may exclude an officer
the agency from the annual and s
leave provisions only if the offi
meets all of the following criteria:

(1) The officer is a Presidential
pointee;

(2) The rate of pay for the office
position does not exceed the rate
GS-18 (Presidential appointees p
more than the rate for GS-18 bei
automatically excluded from annu
and sick leave); and

(3) The officer's responsibilities
carrying out the duties of the positi
continue outside normal duty hou
and while away from the normal du
post.

(c) *Revocation of exclusion.* T
head of an agency may revoke an
clusion from the annual and sick lea
provisions which was made under th
section.

(d) *Reports.* The head of an agen
must report any exclusion, or revo
tion of an exclusion, authorized und
this section to the Office of Person
Management.

(e) *Continuation of previous auth*
izations. Any officer in an agency w
was excluded by action of the Pre
dent or the Civil Service Commissi
prior to February 15, 1979, from t
annual and sick leave provisions und
the authority of 5 U.S.C. 6301(2)(
shall continue to be excluded fro
annual and sick leave unless the excl
sion is revoked by the agency und
the provisions of this section.

[44 FR 54694, Sept. 21, 1979]

Subpart C—Annual Leave

§ 630.301 Annual leave accumulation Senior Executive Service.

(a) In accordance with subsection
of section 6304 of title 5, United Stat

Code, the limitations on accumulation of annual leave imposed by subsections (a), (b), and (c) of section 6304 do not apply to leave accrued by an individual while serving under an appointment to the Senior Executive Service under subchapter VIII of chapter 33 of such title 5.

(b) Annual leave accrued for any pay period during only a portion of which the employee served under an appointment to the Senior Executive Service shall be prorated, and only that portion of the leave that is attributable to the service in the Senior Executive Service shall not be subject to the limitations on accumulation of annual leave imposed by subsections (a), (b), and (c) of section 6304 of title 5, United States Code.

(c) When an individual who has been serving under an appointment to the Senior Executive Service moves to a position in which he or she is no longer in the Senior Executive Service, any annual leave which was accumulated while serving in the Senior Executive Service, and which is in excess of the amount allowed by subsection (a), (b), or (c) of section 6304 of title 5, United States Code, shall remain to the employee's credit and shall be subject to reduction under procedures identical to those described in subsection (c) of section 6304.

[45 FR 1592, Jan. 8, 1980]

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder) becomes subject to section 6304(b) of title 5, United States Code, is the:

(1) Date of his entry on duty when he is employed locally;

(2) Date of his arrival at a post of regular assignment for duty; or

(3) Date on which he begins to perform duty in an area outside the United States and the area of recruitment or from which transferred, when the employee is required to perform duty en route to his post of regular assignment for duty.

(b) Subject to section 6304(c) of title 5, United States Code, the maximum amount of annual leave that may be carried forward into the next leave year by an employee who is transferred or reassigned to a position in which he is no longer subject to section 6304(b) of that title is determined as follows:

(1) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is 30 days or less, he may carry forward the amount prescribed by section 6304(a) of title 5, United States Code;

(2) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 30 days but not more than 45 days, he may carry forward the full amount thereof that is unused at the end of the current leave year;

(3) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 45 days, he may carry forward the amount of unused annual leave to his credit at the end of the current leave year that does not exceed:

(i) 45 days, if he is not entitled to a greater accumulation under section 6304(c) of title 5, United States Code; or

(ii) The amount he is entitled to accumulate under section 6304(c) of that title, if that amount is greater than 45 days.

(c) For the purposes of paragraph (b) of this section, an agency shall determine the amount of an employee's accumulated and accrued annual leave at the end of the pay period which includes:

(1) The date on which the employee departs from his post of regular assignment for transfer or reassignment, except that when the employee is required to perform duty en route in an area in which he would be subject to section 6304(b) of title 5, United States Code, if assigned there, it is the date on which he ceases to perform the duty; or

(2) The date on which final administrative approval is given to effect a change in the employee's duty station when he is on detail or leave in the United States, or in an area (the Commonwealth of Puerto Rico or a territory or possession of the United

States) from which he was recruited or transferred.

§ 630.303 Part-time employees; earnings.

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek, and a part-time employee on a flexible work schedule for whom there has been established only a biweekly work requirement, earn annual leave as follows:

(a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.

[33 FR 12475, Sept. 4, 1968, as amended at 48 FR 44061, Sept. 27, 1983]

§ 630.304 Accumulation limitation for part-time employees.

A part-time employee may accumulate not more than 240 or 360 hours' annual leave on the same basis that a full-time employee may accumulate not more than 30 or 45 days' annual leave.

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[53 FR 42933, Oct. 25, 1988]

§ 630.306 Time limit for use of restored annual leave.

Except as otherwise authorized by regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending two years after:

(a) The date of restoration of the annual leave forfeited because of administrative error; or,

(b) The date fixed by the agency head, or his designated official, as the termination date of the exigency of the public business which resulted in forfeiture of the annual leave; or,

(c) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

[39 FR 1575, Jan. 11, 1974, as amended at 50 FR 3314, Jan. 24, 1985; 50 FR 29937, July 23, 1985]

§ 630.307 Time limit for use of restored annual leave—former missing employees.

Annual leave restored under section 5562 of title 5, United States Code, shall be used within a time limit to be prescribed by the Office of Personnel Management in each case taking into consideration the amount of the restored leave and other relevant factors.

[39 FR 1575, Jan. 11, 1974]

§ 630.308 Scheduling annual leave.

Beginning with the 1974 leave year, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

[39 FR 1575, Jan. 11, 1974]

§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

(a) Annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency, as defined in paragraph (b) of this section, must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

(b) An "extended exigency" means an exigency of such significance as to—

(1) Threaten the national security, safety, or welfare;

(2) Last more than 3 calendar years;

(3) Affect a segment of an agency or occupational class; and

(4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in § 630.306.

[50 FR 29937, July 23, 1985]

Subpart D—Sick Leave

§ 630.401 Grant of sick leave.

An agency shall grant sick leave to an employee when the employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;

(c) Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or

(d) Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease.

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may prescribe. An employee shall request advance approval for sick leave for medical, dental, or optical examination.

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence.

§ 630.404 Limitation on advance sick leave.

When an employee is serving under a limited appointment or one which will be terminated on a specified date, an agency may advance sick leave to him up to the total sick leave which he would otherwise earn during the term of his appointment. For the purposes of this section, an employee serving a probationary or trial period is not serving under a limited appointment.

§ 630.405 Sickness during annual leave.

When sickness occurs within a period of annual leave, an agency may grant sick leave for the period of sickness.

§ 630.406 Part-time employees; earnings.

A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

§ 630.407 Sick leave used in computation of annuity.

Sick leave which is used in the computation of annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

[34 FR 17617, Oct. 31, 1969]

Subpart E—Recredit of Leave

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 6306 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

[35 FR 18581, Dec. 8, 1970]

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his sick leave account to the employing agency for credit or charge.

(b) Except as provided in paragraphs (c) and (d) of this section, an employee who is separated from the Federal Government or the government of the District of Columbia for other than retirement purposes is entitled to a recredit of sick leave if reemployed in the Federal Government within 3 years after separation is effected.

(c) An employee who is employed by the Appalachian Regional Commission established under 40 U.S.C. 101, App. A, within 4 calendar days after separation from the Federal Government is entitled to a recredit of sick leave if—

(1) Reemployed by the Federal Government within 6 months after separation from the Commission; and

(2) Employment with the Commission exceeded 2 years and 6 months without a break of more than 3 calendar days.

(d)(1) An employee who is separated from the Federal Government or the government of the District of Columbia to accompany a civilian or uniformed sponsor on official assignment to an overseas area is entitled to a recredit of sick leave within the time limit provided by paragraph (b) of this section or within no more than 2 years after he or she returns to the United States from an overseas area to which the sponsor was assigned, whichever is later, provided the individual—

(i) Was a family member of a Federal civilian employee or a member of a uniformed service who was assigned to an overseas area; and

(ii) Accompanied the civilian employee or uniformed sponsor on official assignment in the overseas area during the 3-year period specified in paragraph (b) of this section.

(2) For the purpose of this paragraph, "accompanied the civilian or uniformed sponsor on official assignment in the overseas area," "family member," "Federal civilian employee," "member of a uniformed service," "overseas area," "sponsor," and "United States" have the meanings given to them in § 315.608(b) of this chapter.

(e) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(f) An employee who transfers to a position under a different leave system to which he can transfer only a part of his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

(g) An employee who transfers to a position to which he cannot transfer his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

[33 FR 12475, Sept. 4, 1968, as amended at 51 FR 15743, Apr. 28, 1986; 55 FR 6595, Feb. 26, 1990]

§ 630.503 Leave from former leave systems.

An employee who earned leave under the leave acts of 1936 or any other leave system merged under subchapter I of chapter 63 of title 5, United States Code, is entitled to a recredit of that leave under that subchapter if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

§ 630.504 Reestablishment of leave account after military service.

When an employee leaves his civilian position to enter the military service, the agency shall certify his leave account for credit or charge. When the employee is:

(a) Restored in accordance with a right of restoration after separation from active military duty or hopitalization continuing thereafter as provided by law, or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, not more than 3 years after his separation from active military duty;

the agency in which he is restored or reemployed shall reestablish the certified leave account as a credit or charge.

§ 630.505 Restoration after appeal.

When an employee is restored to an agency as a result of an appeal, the agency shall reestablish his leave account as a credit or charge as it was at the time of separation.

§ 630.506 Minimum unit.

(a) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, in different agencies, only his leave in whole hour units may be transferred.

(b) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, covered by different leave charging systems within the same agency, his leave is transferable in accordance with paragraph (a) of this section, unless the agency establishes a different policy making fractions of an hour of leave transferable.

[38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

Subpart F—Home Leave

§ 630.601 Definitions.

In this subpart:

(a) "Home leave" means leave authorized by section 6305(a) of title 5, United States Code, and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.

(b) "Month" means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.

(c) "Service abroad" means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

§ 630.602 Coverage.

An employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with section 6305(a) of that title and this subpart.

§ 630.603 Computation of service abroad.

For the purpose of this subpart, service abroad:

(a) Begins on the date of the employee's arrival at a post of duty outside the United States, or on the date of his entrance on duty when recruited abroad;

(b) Ends on the date of the employee's departure from the post for separation or for assignment in the United States, or on the date of his separation from duty when separated abroad; and

(c) Includes (1) absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, (2) authorized leave with pay, (3) time spent in the Armed Forces of the United States which interrupts service abroad (but only for eligibility, not leave-earning, purposes), and (4) a period of detail.

In computing service abroad, full credit is given for the day of arrival and the day of departure.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.604 Earning rates.

(a) For each 12 months of service abroad, an employee earns home leave at the following rate:

(1) An employee who accepts an appointment to, or occupies, a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate—15 days.

(2) An employee who is serving with a U.S. mission to a public international organization—15 days.

(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differ-

ential of 20 percent or more is authorized by law or regulation—15 days.

(4) An employee not included in paragraph (a) (1), (2), or (3) of this section who is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent but less than 20 percent is authorized by law or regulation—10 days.

(5) An employee not included in paragraph (a) (1), (2), (3), or (4) of this section—5 days.

(6) An employee included under (a) (1) through (5) of this section whose civilian service abroad is interrupted by a tour of duty in the Armed Forces of the United States, for the duration of such tour—0 (zero) days.

(b) An agency shall credit home leave to an employee's leave account, as earned, in multiples of 1 day.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.605 Computation of home leave.

(a) For each month of service abroad, an employee earns home leave under the rates fixed by § 630.604(a) in the amounts set forth in the following table:

HOME LEAVE-EARNING TABLE

[Days earned]

Months of service abroad	Earning rate (days for each 12 months)		
	15	10	5
1	1	0	0
2	2	1	0
3	3	2	1
4	5	3	1
5	6	4	2
6	7	5	2
7	8	5	2
8	10	6	3
9	11	7	3
10	12	8	4
11	13	9	4
12	15	10	5

(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency shall credit the employee with the amount of home leave for the month at the rate to which he was entitled before the change in his home leave-earning rate.

§ 630.606 Grant of home leave.

(a) *Entitlement.* Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of 1 or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject to section 6305(a) of title 5, United States Code.

(b) *Agency authority.* A grant of home leave is at the discretion of an agency. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) *Limitations.* An agency may grant home leave only:

(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in paragraph (c)(2) of this section may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

(d) *Charging of home leave.* The minimum charge for home leave is 1 day and additional charges are in multiples thereof.

(e) *Refund for home leave.* An employee is indebted for the home leave used by him when he fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States.

However, a refund for this indebtedness is not required when (1) the employee has completed not less than 6 months' service in an assignment in the United States following the period of home leave; (2) the agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which the employee has no control; or (3) the agency which granted the home leave determines that it is in the public interest not to return the employee to his overseas assignment.

§ 630.607 Transfer and recredit of home leave.

An employee is entitled to have his home leave account transferred or recredited to his account when he moves between agencies or is reemployed without a break in service of more than 90 days.

Subpart G—Shore Leave

AUTHORITY: 5 U.S.C. 6305.

§ 630.701 Coverage.

This subpart applies to an employee as defined in section 6301 of title 5, United States Code, who is regularly assigned to duties aboard an oceangoing vessel. An employee is considered to be regularly assigned when his continuing duties are such that all or a significant part of them require that he serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

§ 630.702 Definitions.

(a) "Oceangoing vessel" means a vessel in use on the high seas or the Great Lakes; but does not include a vessel which operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or Alaskan waters, or waters outside its normal area of operations or outside the 3-nautical-mile limit.

(b) "Voyage" means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

(c) "Extended voyage" means a voyage of not less than 7 consecutive calendar days duration.

(d) "Shore leave" means leave authorized by section 6305(c) of title 5, United States Code, and this subpart.

§ 630.703 Computation of shore leave.

(a) An employee earns shore leave at the rate of 1 day of shore leave for each 15 calendar days of absence on one or more extended voyages.

(b) (1) For an employee who is an officer or crewmember, a voyage begins either on the date he assumes his duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he comes aboard when a voyage is in progress. The voyage terminates on the date he ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he is released from assignment of his duties relating to that voyage aboard the oceangoing vessel at the port of origin or port of final discharge, whichever is earlier.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his assignment aboard the vessel, or on the date he is released from his assignment aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency shall include (1) the beginning date of a voyage and the termination date of a voyage; (2) the days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin; (3) the days an employee spends traveling between oceangoing vessels when the employee is assigned from one vessel to another; (4) the period representing the number of days within which an employee is reasonably expected to return to the port of origin when his oceangoing vessel's voyage is terminated, or his employment as an officer or crewmember is terminated, at a port other than the port of origin; (5) for an employee who is an officer or crewmember, the days on which he is on sick leave when he becomes sick during a voyage (whether or not continued as a member of the crew) but not beyond the termination date of the voyage of the oceangoing vessel or his repatriation to the port of origin, whichever is earlier; (6) for an employee other than an officer or crewmember, the days on which he is carried on sick leave but not beyond the date on which he returns to the port of origin or the termination date of the voyage, whichever is earlier; and (7) the days of approved leave from a vessel (paid or unpaid) during a voyage.

§ 630.704 Granting shore leave.

(a) *Authority.* (1) An employee has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) Shore leave may be granted during a voyage only when requested by an employee.

(3) An employee shall submit his request for shore leave in writing and whenever an employee's request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave is in addition to annual leave and may be accumulated for future use without limitation.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the service.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, an agency shall not grant shore leave to an employee as terminal leave. For the purpose of this paragraph terminal leave is approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his separation.

(2) An agency shall grant shore leave as terminal leave when the employee's inability to use shore leave was due to circumstances beyond his control and not due to his own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before (1) separation from the service, or (2) official assignment (other than by temporary detail) to a position in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, the agency to the extent administratively practicable shall give an employee an opportunity to use the shore leave he has to his credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

Subpart H—Funeral Leave

SOURCE: 34 FR 13655, Aug. 26, 1969, unless otherwise noted.

§ 630.801 Applicability.

This subpart and section 6326 of title 5, United States Code, apply to the granting of funeral leave to an employee in connection with the funeral of, or memorial service for, his immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone.

§ 630.802 Coverage.

This subpart applies to:

(a) An employee as defined in section 2105 of title 5, United States Code, who is employed by an executive agency as defined in section 105 of title 5, United States Code; and

(b) An individual who is employed by the government of the District of Columbia.

§ 630.803 Definitions.

(a) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) "Combat zone" means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

(c) "Employee" means an employee or individual covered by § 630.802.

(d) "Immediate relative" means the following relatives of the deceased member of the armed forces:

(1) Spouse, and parents thereof;

(2) Children, including adopted children, and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.

(e) "Funeral leave" means leave authorized by section 6326 of title 5, United States Code, and this subpart.

§ 630.804 Granting of funeral leave.

(a) An agency shall grant an employee such funeral leave as is needed and requested by him, not to exceed 3 workdays, without loss of or reduction in pay, leave to which he is otherwise entitled, or credit for time or service, and without adversely affecting his performance or efficiency rating. Funeral leave is granted to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The 3 days need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, or, in the case of a substitute employee in the postal field service, from a period during which, except for absence on funeral leave, the employee would have worked.

Subpart I—Voluntary Leave Transfer Program

SOURCE: 54 FR 4750, Jan. 31, 1989, unless otherwise noted.

EFFECTIVE DATE NOTE: At 54 FR 4750, Jan. 31, 1989, Subpart I was revised as an interim rule. At 54 FR 53309, Dec. 28, 1989, OPM adopted the interim rule as a final rule, effective January 29, 1990 and will expire on October 31, 1993.

§ 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are not employed in agencies or their organizational subunits approved by the Office of Personnel Management to operate a voluntary leave bank program under Subpart J of this part.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 18268, Apr. 28, 1989]

§ 630.902 Definitions.

Agency means—

(a) An "Executive agency," as defined in 5 U.S.C. 105;

(b) A "military department," as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. "Agency" does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other Executive agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Employee has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia.

Family member means the following relatives of the employee:

(a) Spouse, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents;

(d) Brothers and sisters, and spouses thereof; and

(e) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Leave donor means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

Leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

Medical emergency means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

Paid leave status under subchapter I means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

Transferred leave status means the administrative status of an employee while the employee is using transferred leave under this subpart.

§ 630.903 Administrative procedures.

Each Federal agency shall establish procedures to administer the voluntary leave transfer program established by the Office of Personnel Management under Public Law 100-566 and this subpart by April 30, 1989.

§ 630.904 Application to become a leave recipient.

(a) An employee may make written application to his or her employing agency to become a leave recipient. If an employee is not capable of making application on his or her own behalf, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) The reasons why transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the potential leave recipient's employing agency so requires; and

(4) Any additional information that may be required by the potential leave recipient's employing agency.

(c) If the potential leave recipient's employing agency requires that a potential leave recipient obtain certification from two or more sources under paragraph (b)(3) of this section, the potential leave recipient's employing agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the potential leave recipient is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.905 Approval of application to become a leave recipient.

(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by a "medical emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a "medical emergency" is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(d) If the application is approved, the employing agency shall notify the leave recipient (or the personal representative who made application on behalf of the leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later), that—

(1) The application has been approved; and

(2) Other employees of the leave recipient's employing agency may request the transfer of annual leave to the account of the leave recipient.

(e) If the application is not approved, the employing agency shall notify the applicant (or the personal representative who made application on behalf of the potential leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later)—

(1) That the application has not been approved; and

(2) Of the reasons for its disapproval.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 53309, Dec. 28, 1989]

§ 630.906 Transfer of annual leave.

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (f) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(b) Except as provided in paragraph (d) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.908 of this part, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing agency.

(c) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the transfer of annual leave to or from such employees under this subpart.

(d) A leave recipient's employing agency shall not transfer annual leave to a leave donor's immediate supervisor.

(e) Annual leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date fixed by the leave recipient's employing agency as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

(f) A leave recipient's employing agency shall accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(2) In the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

(3) In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(g) The employing agency of a leave donor who wishes to donate annual leave to a leave recipient in another agency shall verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations under § 630.908 of this part, and ascertain that the leave recipient's employing agency has made any determination that may be required under paragraph (f) of this section. Upon satisfying these requirements, the leave donor's employing agency shall—

(1) Reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and

(2) Notify the leave recipient's employing agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

§ 630.907 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this section—

(1) Shall be credited to annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee, and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until, under paragraph (c) of this section, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in § 630.910(a) (2) and (3) of this part.

(d) If the leave recipient's employing agency makes available at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure to the extent practicable that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use after the medical emergency terminates; and

(2) The employee shall continue to accrue annual leave while in a transferred leave status to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave made available at the beginning of the leave year.

(e) If the employee's medical emergency terminates as described in § 630.910(a)(1) of this part, no leave shall be credited to the employee under this section.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 18268, Apr. 28, 1989]

§ 630.908 Limitations on donation of annual leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(c) Each agency shall establish written criteria for waiving the limitations on donating annual leave under paragraphs (a) and (b) of this section is unusual circumstances. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed under Subparts I and J of this part.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 18268, Apr. 28, 1989]

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303.

(b) Except as provided in § 630.907, during each biweekly pay period a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using transferred annual leave.

(c) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(d) Transferred annual leave may not be—

(1) Transferred to another leave recipient under this subpart, except as provided in § 630.911(e)(3) of this part;

(2) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 18268, Apr. 28, 1989; 54 FR 53309, Dec. 28, 1989]

§ 630.910 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service is terminated;

(2) When the leave recipient transfers from an agency or organizational subunit operating a voluntary leave transfer program to an agency or organizational subunit operating a voluntary leave bank program;

(3) At the end of the biweekly pay period in which the leave recipient's employing agency receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(4) At the end of the biweekly pay period in which the leave recipient's employing agency determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(5) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement

System or the Federal Employees' Retirement System.

(b) The leave recipient's employing agency shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

(c) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.911 of this part.

(d) An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.

[54 FR 4750, Jan. 31, 1989, as amended at 54 FR 18268, Apr. 28, 1989; 54 FR 53309, Dec. 28, 1989]

§ 630.911 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible, by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, United States Code.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time establis
by the leave donor's employing age
to account for annual leave.

(c) If the total number of elig
leave donors exceeds the total num
of hours of annual leave to be
stored, no unused transferred ann
leave shall be restored. In no c
shall the amount of annual leave
stored to a leave donor exceed
amount transferred to the leave rec
ent by the leave donor.

(d) If the leave donor retires fr
Federal service, dies, or is otherw
separated from Federal service bef
the date unused transferred ann
leave can be restored, the employ
agency of the leave recipient shall
restore the unused transferred ann
leave.

(e) At the election of the le
donor, unused transferred ann
leave restored to the leave do
under paragraph (a) of this sect
may be restored by—

(1) Crediting the restored ann
leave to the leave donor's annual le
account in the current leave year;

(2) Crediting the restored ann
leave to the leave donor's annual le
account effective as of the first day
the first leave year beginning after
date of election; or

(3) Donating such leave in whole
part to another leave recipient.

(f) If a leave donor elects to don
only part of his or her restored le
to another leave recipient under pa
graph (e)(3) of this section, the do
may elect to have the remaining le
credited to the leave donor's ann
leave account under paragraph (e)
or (e)(2) of this section.

(g) Transferred annual leave
stored to the account of a leave do
under paragraph (e) (1) or (2) of t
section shall be subject to the limi
tion imposed by 5 U.S.C. 6304(a) at
end of the leave year in which the
stored leave is credited to the le
donor's annual leave account.

§ 630.912 Prohibition of coercion.

(a) An employee may not directly
indirectly intimidate, threaten,
coerce, or attempt to intimida
threaten, or coerce, any other empl
ee for the purpose of interfering w

any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.913 Records and reports.

(a) The Office of Personnel Management (OPM) shall require agencies to maintain records and may require agencies to report pertinent information to OPM concerning the administration of the voluntary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

(b) Agencies shall maintain the following information:

(1) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(2) The grade or pay level of each leave recipient and leave donor and the gender of each leave recipient;

(3) The total amount of annual leave transferred to each leave recipient's annual leave account;

(4) The total amount of transferred annual leave used by each leave recipient;

(5) The estimated direct and indirect costs of processing leave transfer requests, transferring leave between the accounts of leave donors and leave recipients, monitoring the use of transferred leave, restoring unused leave to the accounts of leave donors, and other activities related to administering the voluntary leave transfer program;

(6) The number of leave recipients who returned to work after the termination of the medical emergency;

(7) The number of leave recipients who retired on disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System within 6 months after the termination of the medical emergency; and

(8) Any additional information OPM may require.

[54 FR 4750, Jan. 31, 1989, as amended 54 FR 53309, Dec. 28, 1989]

§ 630.914 Continuation of temporary leave transfer program.

Until each agency establishes procedures to administer the voluntary leave transfer program established under 5 U.S.C. 6332, Pub. L. 100-566, and this subpart, the temporary leave transfer program authorized by Public Laws 100-102 and 100-440 shall remain in effect.

§ 630.915 Termination of voluntary leave transfer program.

(a) The voluntary leave transfer program shall terminate on October 31, 1993.

(b) If the voluntary leave transfer program terminates before the termination of the medical emergency affecting a leave recipient, any annual leave transferred to the leave recipient before the termination of the voluntary leave transfer program shall remain available for use by the leave recipient until the termination of the medical emergency.

Subpart J—Voluntary Leave Bank Program

SOURCE: 54 FR 18269, Apr. 28, 1989, unless otherwise noted.

§ 630.1001 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a voluntary leave bank program in approved agencies under which the unused accrued annual leave of an employee may be contributed to a leave bank for use by a leave bank member who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are employed in agencies and their organizational subunits ap-

proved by the Office of Personnel Management to operate a voluntary leave bank program under this subpart.

§ 630.1002 Definitions.

Agency means an "Executive agency," as defined in 5 U.S.C. 105, or a "military department," as defined in 5 U.S.C. 102, that has been approved by OPM to operate a voluntary leave bank program under this subpart. "Agency" does not include the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, or any other Executive agency or subunit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Employee has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia. Except as otherwise indicated, "employee" means an employee of an agency or organizational subunit of an agency that has been approved by OPM to operate a voluntary leave bank program under this subpart.

Family member has the meaning given that term in Subpart I of this part.

Leave bank means a pooled fund of annual leave established by an agency under § 630.1003.

Leave bank member means a leave contributor who has contributed, in an open enrollment period (or individual enrollment period, as applicable) of the current leave year, at least the minimum amount of annual leave required by § 630.1004.

Leave contributor means an employee who contributes annual leave to a leave bank under § 630.1004.

Leave recipient means a leave bank member whose application to receive contributions of annual leave from a leave bank has been approved under § 630.1007.

Medical emergency has the meaning given that term in Subpart I of this part.

Paid leave status under subchapter I has the meaning given that term in Subpart I of this part.

§ 630.1003 Establishing leave banks and leave bank boards.

(a) By July 31, 1989, each agency approved by OPM to participate in the voluntary leave bank program shall, in accordance with the regulations in this subpart—

(1) Develop written policies and procedures for establishing and administering leave banks and leave bank boards;

(2) In consultation with OPM, establish one or more leave bank boards to perform the duties authorized by this subpart; and

(3) Establish and begin operating one or more leave banks.

(b) No more than one leave bank board may be established for each leave bank.

(c) Each leave bank board shall consist of three members. At least one member shall represent a labor organization or employee group.

(d) Each leave bank board shall—

(1) Establish its internal decision-making procedures;

(2) Review and approve or disapprove each application to become a leave contributor under § 630.1004 and a leave recipient under §§ 630.1006 and 630.1007;

(3) Monitor the status of each leave recipient's medical emergency;

(4) Monitor the amount of leave in the leave bank and the number of applications to become a leave recipient;

(5) Maintain an adequate amount of annual leave in the leave bank to the greatest extent practicable in accordance with § 630.1004; and

(6) Perform other functions prescribed in this subpart.

(e) Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks.

§ 630.1004 Application to become a leave contributor and leave bank member.

(a) An employee may make voluntary written application to the leave bank board to become a leave contributor. The application shall specify the number of hours of annual leave to be contributed and any other information the leave bank board may reasonably require.

(b) An employee may request that annual leave be contributed to a specified bank member other than the leave contributor's immediate supervisor.

(c) A leave contributor shall become a leave bank member for a particular leave year if he or she submits an application meeting the requirements of this section during an open enrollment period established by the leave bank board under paragraphs (d) and (e) of this section (or where applicable, during an individual enrollment period established under paragraph (f) of this section).

(d) For the leave year beginning in 1989, the leave bank board shall establish at least one open enrollment period, beginning on the date the agency establishes the voluntary leave bank program. For each leave year beginning after 1989, the leave bank board shall establish at least one open enrollment period.

(e) An open enrollment period shall last at least 30 calendar days. The agency shall take appropriate action to inform employees of each open enrollment period.

(f) An employee entering the agency or participating organizational subunit or returning from an extended absence outside an open enrollment period may become a leave bank member for the leave year by submitting an application meeting the requirements of this section during an individual enrollment period lasting at least 30 calendar days, beginning on the date the employee entered or returned to the agency or organizational subunit.

(g) Except as provided in paragraph (h) of this section, the minimum contribution required to become a leave bank member for a leave year shall be—

(1) 4 hours of annual leave for an employee who has less than 3 years of service at the time he or she submits an application to contribute annual leave;

(2) 6 hours of annual leave for an employee who has at least 3, but less than 15, years of service at the time he or she submits an application to contribute annual leave; and

(3) 8 hours of annual leave for an employee who has 15 or more years of service at the time he or she submits an application to contribute annual leave.

(h) After consultation with OPM, the leave bank board may—

(1) Decrease the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that there is a surplus of leave in the bank; or

(2) Increase the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that such action is necessary to maintain an adequate balance of annual leave in the leave bank.

(i) If a leave recipient does not have sufficient available accrued annual leave to his or her credit to make the full minimum contribution required by this section, he or she shall be deemed to have made the minimum contribution.

(j) The leave bank board shall deposit all contributions of annual leave under this subpart in the leave bank. The leave bank board shall not return a contribution of annual leave to a leave contributor after deposit in the leave bank.

(k) A leave bank member may apply to contribute additional annual leave at any time. An employee who is not a leave bank member may apply to become a leave contributor at any time.

[54 FR 18269, Apr. 28, 1989, as amended at 54 FR 53309, Dec. 28, 1989]

§ 630.1005 Limitations on contribution of annual leave.

(a) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made.

(b) In the case of a leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be contributed during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) The number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

(c) The agency shall establish written criteria permitting a leave bank board to waive the limitations on contributing annual leave under paragraphs (a) and (b) of this section in unusual circumstances. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed during the leave year under Subparts I and J of this part.

§ 630.1006 Application to become a leave recipient.

(a) A leave bank member may make written application to the leave bank board to become a leave recipient. If a leave bank member is not capable of making application on his or her own behalf, a personal representative may make written application on his or her behalf.

(b) The leave bank board may require leave bank members to submit applications under this section within a prescribed period of time following the termination of a medical emergency.

(c) An application by a leave bank member to become a leave recipient shall be accompanied by the following information concerning the potential leave recipient:

(1) The leave bank member's name, position title, and grade or pay level;

(2) The reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member;

(3) Certification from one or more physicians; or other appropriate experts, with respect to the medical emergency, if the leave bank board so requires; and

(4) Any additional information that may be required by the leave bank board.

(d) If the leave bank board requires a leave bank member to submit certification from two or more sources under paragraph (b)(3) of this section, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the leave bank member is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.1007 Approval of application to become a leave recipient.

(a) The leave bank board shall review an employee's application to become a leave recipient under procedures established by the agency for the purpose of determining whether the employee is a leave bank member who is or has been affected by a "medical emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the leave bank board shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, the leave bank board shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(d) The leave bank board shall notify the applicant of the action taken on the application. If the leave bank board disapproves the application, notification shall include the reasons for disapproval.

(e) The agency shall establish a time limit for notifying applicants under paragraph (d) of this section.

(f) The leave bank board may establish written policies limiting the amount of annual leave that may be granted to a leave recipient.

[54 FR 18269, Apr. 28, 1989, as amended at 54 FR 53309, Dec. 28, 1989]

§ 630.1008 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, annual and sick leave shall accrue to the credit of a leave recipient using annual leave withdrawn from a leave bank at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by a leave recipient while using annual leave withdrawn from a leave bank in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by a leave recipient while using annual leave withdrawn from a leave bank in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by a leave recipient while using annual leave withdrawn from a leave bank—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the leave recipient and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until, under paragraph (c) of this section, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in § 630.1010(a) (2), (3), and (4).

(d) If the leave recipient's employing agency makes available at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure to the extent practicable that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use after the medical emergency terminates; and

(2) The employee shall continue to accrue annual leave while using annual leave withdrawn from a leave bank to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave made available at the beginning of the leave year.

(e) If the leave recipient's medical emergency terminates as described in § 630.1010(a)(1), no leave shall be credited to the employee under this section.

§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303.

(b) Except as provided in § 630.1008, during each biweekly pay period a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using annual leave withdrawn from a leave bank.

(c) The approval and use of annual leave withdrawn from a leave bank shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of this chapter, and the agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that annual leave withdrawn from a leave bank may accumulate without regard to any limitation imposed by 5 U.S.C. 6304(a).

(d) Annual leave withdrawn from a leave bank may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after the date fixed by the agency as the beginning of the medical emergency.

(e) Annual leave withdrawn from a leave bank may not be—

(1) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(2) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

(f) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the contribution and withdrawal of annual leave by such employees under this subpart.

§ 630.1010 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service terminates;

(2) When the leave recipient leaves the agency or participating organizational subunit;

(3) At the end of the biweekly pay period in which the leave bank board receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(4) At the end of the biweekly pay period in which the leave bank board determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(5) At the end of the biweekly pay period in which the agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

(b) The leave bank board shall ensure that annual leave withdrawn from the leave bank and not used before the termination of a leave recipient's medical emergency shall be returned to the leave bank.

(c) The leave bank board may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive contributions of annual leave.

[54 FR 18269, Apr. 28, 1989, as amended at 54 FR 53309, Dec. 28, 1989]

§ 630.1011 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to contributing, withdrawing, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section—

(1) The term "employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the District of Columbia; and

(2) The term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to affect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.1012 Records and reports.

(a) OPM shall require agencies to maintain records and may require agencies to report pertinent information concerning the administration of the voluntary leave bank program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave bank program.

(b) An agency shall maintain the following information for each leave bank:

(1) The number of leave bank members for each leave year;

(2) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(3) The grade or pay level of each leave contributor and the total amount of annual leave he or she contributed to the bank;

(4) The grade or pay level and gender of each leave recipient and the total amount of annual leave he or she actually used;

(5) The estimated direct and indirect costs of processing applications to become leave contributors and leave recipients, monitoring the use of leave withdrawn from a leave bank, operating leave bank boards, and other activities related to administering the voluntary leave bank program;

(6) The number of leave recipients who returned to work after the termination of the medical emergency;

(7) The number of leave recipients who retired on disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System within 6 months after the termination of the medical emergency; and

(8) Any additional information OPM may require.

[54 FR 18269, Apr. 28, 1989, as amended at 54 FR 53309, Dec. 28, 1989]

§ 630.1013 Nonparticipation in voluntary leave transfer program.

(a) Beginning on the date an agency or organizational subunit establishes a voluntary leave bank program under this subpart—

(1) An employee may not participate in a voluntary leave transfer program under Subpart I of this part; and

(2) Except as provided in paragraphs (b) and (c) of this section, any annual leave previously transferred under the voluntary leave transfer program shall remain to the credit of the leave recipient and shall become subject to the agency's policies and procedures for administering this subpart.

(b) Upon termination of a leave recipient's medical emergency, any annuall leave previously transferred under the voluntary leave transfer program and remaining to the credit of a leave recipient shall be restored under § 630.911 paragraphs (a) through (d).

(c) Transferred annual leave restored to the account of a leave donor under paragraph (b) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the annual leave is restored.

§ 630.1014 Movement between voluntary leave bank programs.

If an employee moves between an agency or organizational subunit operating one leave bank to an agency or organizational submit operating a different leave bank, the following procedures shall apply:

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit; and

(b) Nothing in § 630.1010 (a)(2) or (b) of this subpart shall interfere with the employee's right to submit an application to become a leave contributor or leave recipient in accordance with the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit.

§ 630.1015 Movement between voluntary leave bank program and voluntary leave transfer program.

If an employee moves between an agency or organizational subunit covered by a voluntary leave bank program under this subpart and an agency or organizational subunit covered by a voluntary leave transfer program under Subpart I of this part, the following procedures shall apply:

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit;

(b) Nothing in § 630.1010(a)(2) or (b) of this subpart shall interfere with the employee's right to submit an application to become a leave donor (or leave contributor, as applicable) or leave recipient under the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit.

§ 630.1016 Termination of voluntary leave bank program.

(a) Each agency shall terminate its participation in the voluntary leave bank program on October 31, 1993.

(b) The leave bank board shall not deposit annual leave in the leave bank after October 31, 1993.

(c) The leave bank board shall treat an application to become a leave recipient submitted to the leave bank board on or before October 31, 1993, as if the voluntary leave bank program remained in effect.

(d) The leave bank board shall not approve an application to become a leave recipient submitted after October 31, 1993.

(e) If the voluntary leave bank program terminates before the termination of the medical emergency affecting a leave recipient, annual leave transferred to a leave recipient shall remain available for use as if the voluntary leave bank program remained in effect.

FINDING AIDS

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